

Before the  
Federal Communications Commission  
Washington, DC 20554

BELLSOUTH  
TELECOMMUNICATIONS, LLC  
d/b/a AT&T NORTH CAROLINA and  
d/b/a AT&T SOUTH CAROLINA,

Complainant,

v.

DUKE ENERGY PROGRESS, LLC,

Defendant.

Proceeding No. 20-293  
Bureau ID No. EB-20-MD-004

INITIAL SUPPLEMENTAL BRIEF

**BELLSOUTH TELECOMMUNICATIONS,  
LLC d/b/a AT&T NORTH CAROLINA and  
AT&T SOUTH CAROLINA**

**By Counsel:**

Robert Vitanza  
David J. Chorzempa  
David Lawson  
AT&T SERVICES, INC.  
1120 20th Street, NW, Suite 1000  
Washington, DC 20036  
(214) 757-3357

Christopher S. Huther  
Claire J. Evans  
Frank Scaduto  
WILEY REIN LLP  
1776 K Street NW  
Washington, DC 20006  
(202) 719-7000  
chuther@wiley.law  
cevens@wiley.law  
fscaduto@wiley.law

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\* Certain information in this Initial Supplemental Brief and its Exhibits has been designated confidential pursuant to 47 C.F.R. § 1.731. The designated information is marked with a text box in the confidential version of these pleadings and is redacted in the public version.

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## I. INTRODUCTION AND SUMMARY

The pleadings and record confirm that the just and reasonable rate for AT&T's use of Duke Progress's poles is the new telecom rate that is guaranteed AT&T's cable and CLEC competitors. That properly calculated new telecom rate, which is about \$7.40 per pole, fully compensates Duke Progress for all "costs caused by third-party attachments," including AT&T's.<sup>1</sup> There is no valid reason to charge AT&T more.

The terms and conditions of the parties' joint use agreement ("JUA") do not warrant a higher rate because they do not provide AT&T net benefits "that materially advantage [AT&T] over other telecommunications carriers or cable television systems providing telecommunications services on the same poles."<sup>2</sup> As compared to the contractual, statutory, and regulatory rights enjoyed by AT&T's competitors, the JUA disadvantages AT&T—providing AT&T limited access to fewer poles, denying AT&T the make-ready deadlines and remedies that expedite deployment for AT&T's competitors, and forcing AT&T to shoulder far higher rental and non-rental costs. The just and reasonable rate for AT&T is the new telecom rate.

And even if a higher rate were lawful, it could not exceed the old telecom rate, which, by definition, is about 1.5 times the new telecom rate, or about \$11.20 per pole. Duke Progress's effort to charge AT&T far higher rates—specifically, new telecom rates as high as [REDACTED] per pole and old telecom rates up to [REDACTED] per pole<sup>3</sup>—violates Commission rules and regulations and rests on unexplained, inaccurate, and unrepresentative data that Duke Progress does *not* use to

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<sup>1</sup> See *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5321, 5324 (¶ 183 n.569, ¶ 191) (2011) ("*Pole Attachment Order*") (quoting National Broadband Plan at 110).

<sup>2</sup> 47 C.F.R. § 1.1413(b).

<sup>3</sup> Answer ¶¶ 12, 22.

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calculate rates for AT&T's competitors. The correct result in this case, therefore, is the approximately \$7.40 per pole new telecom rate. It is the only rate that will create rate parity and eliminate the artificially high rates the Commission rejected a decade ago because they discourage investment, impede competition, and undermine the Commission's broadband and deployment goals.<sup>4</sup>

## II. ARGUMENT

### A. The Terms and Conditions of the JUA Competitively *Disadvantage* AT&T.

AT&T is entitled to the new telecom rate for its use of Duke Progress's poles because Duke Progress does not provide AT&T "net benefits" under the newly-renewed JUA as compared to the terms and conditions that apply to "other telecommunications carriers [and] cable television systems providing telecommunications services on the same poles."<sup>5</sup> Instead, the JUA competitively *disadvantages* AT&T in at least seven ways.

1. ***Less Advantageous Contractual Access to Duke's Poles.*** AT&T's limited contractual access to Duke Progress's poles sets AT&T "at a material disadvantage compared to CLECs and CATVs,"<sup>6</sup> which enjoy broader and permanently guaranteed statutory access to

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<sup>4</sup> See, e.g., *Pole Attachment Order*, 26 FCC Rcd at 5241 (¶ 1) ("The Order is designed to promote competition and increase the availability of robust, affordable telecommunications and advanced services to consumers throughout the nation."); see also *In the Matter of Accelerating Wireline Broadband Deployment, Third Report and Order and Declaratory Ruling*, 33 FCC Rcd 7705, 7769 (¶ 126) (2018) ("*Third Report and Order*") ("[W]e agree ... that greater rate parity between incumbent LECs and their telecommunications competitors 'can energize and further accelerate broadband deployment.'").

<sup>5</sup> 47 C.F.R. § 1.1413(b); *Third Report and Order*, 33 FCC Rcd at 7768 (¶ 123). Under the Commission's orders and regulations, all pole attachment terms and conditions applicable to CLECs and cable providers—whether provided by statute, regulation, or contract—are relevant. See 47 C.F.R. § 1.1413(b); *Pole Attachment Order*, 26 FCC Rcd at 5336-37 (¶¶ 217-218).

<sup>6</sup> Answer Ex. E at DEP000329 (Metcalf Decl. ¶ 9).

Duke Progress's poles.<sup>7</sup> As an ILEC, AT&T has "no statutory right of nondiscriminatory access to poles," so its pole access is purely a matter of contract under the JUA.<sup>8</sup> That JUA allows Duke Progress to deny AT&T access to *any* pole it deems unsuitable for joint use<sup>9</sup> and to terminate—at any time and for any reason—AT&T's ability to deploy facilities on future Duke Progress pole lines.<sup>10</sup> If Duke Progress terminates AT&T's access to future pole lines, AT&T would need to identify, obtain approval for, and fund alternate infrastructure for its facilities without the rights and protections of the federal pole attachment scheme, which would significantly complicate and increase AT&T's deployment costs.<sup>11</sup> This gives Duke Progress extraordinary bargaining leverage over AT&T.<sup>12</sup>

In contrast, CLECs and cable companies enjoy a permanent statutory right to access Duke Progress's poles, a right that is unavailable to AT&T.<sup>13</sup> And, even in those few cases

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<sup>7</sup> 47 U.S.C. § 224(f); *see also* Compl. Ex. C at ATT00047 (Peters Aff. ¶ 25); Reply Ex. C at ATT00394 (Peters Reply Aff. ¶ 13); Reply Ex. F at ATT00455-456 (Dippon Reply Aff. ¶ 42).

<sup>8</sup> *Pole Attachment Order*, 26 FCC Rcd at 5329-30 (¶ 207).

<sup>9</sup> Compl. Ex. 1 at ATT00094 (JUA, Art. II).

<sup>10</sup> *Id.* at ATT00104 (JUA, Art. XVII(B)).

<sup>11</sup> *See, e.g.*, Compl. Ex. C at ATT00047 (Peters Aff. ¶ 25); Reply Ex. C at ATT00394 (Peters Reply Aff. ¶ 13); Reply Ex. F at ATT00455-456, ATT00473 (Dippon Reply Aff. ¶¶ 42, 72).

<sup>12</sup> *See, e.g.*, *Verizon Md. LLC v. Potomac Edison Co.*, 35 FCC Rcd 13607, 13617-18 (¶ 26) (2020) ("*Potomac Edison Order*"); *BellSouth Telecommc'ns, LLC v. Fla. Power & Light Co.*, 35 FCC Rcd 5321, 5326-27 (¶¶ 11-12) (EB 2020) ("*FPL 2020 Order*"); *see also* Compl. Ex. D at ATT00062 (Dippon Aff. ¶ 22); Reply Ex. F at ATT00473 (Dippon Reply Aff. ¶ 72).

<sup>13</sup> *See* 47 U.S.C. § 224(f); *see also* *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 16059-60 (¶ 1123) (1996) ("*Local Competition Order*") ("Pursuant to section 224(f)(1), .... no party can use its control of the enumerated facilities and property to impede, inadvertently or otherwise, the installation and maintenance of telecommunications and cable equipment by those seeking to compete in those fields.").



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where Duke Progress can lawfully deny access due to insufficient pole capacity,<sup>14</sup> Duke Progress's license agreements require it to [REDACTED]

[REDACTED]<sup>15</sup> AT&T's far more limited contractual access to Duke Progress's poles sets it at a competitive disadvantage.

**2. Pole Ownership and Maintenance Obligations.** AT&T bears the "burdens ... of pole ownership" under the JUA whereas its competitors "do not own poles" under Duke Progress's license agreements.<sup>16</sup> Absent a permanent statutory right to attach, AT&T relies on the JUA to access Duke Progress's poles, but that JUA extracts a significant cost. AT&T must own and "at its own expense, maintain its Joint Use poles" and "replace such poles that become defective" or are damaged during emergencies.<sup>17</sup> In contrast, AT&T's competitors' statutory right to attach to Duke Progress's poles and resulting license agreements protect them from these costs, requiring Duke Progress to own and maintain the shared poles at its cost.<sup>18</sup> This

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<sup>14</sup> 47 U.S.C. § 224(f); *Pole Attachment Order*, 26 FCC Rcd at 5341 (¶ 232) (narrowly construing when utilities may deny access for lack of capacity); Initial Comments of Duke Energy Corp., et al. at 16-17, *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84 (Sept. 2, 2020) ("Duke Initial Comments") (just 0.024% of electric utility poles required replacement in 2019 due to lack of capacity).

<sup>15</sup> CATV-1 § 3.06 at DEP000009-10; *see also* Ex. 2, Line 1 (Additional license agreement cites).

<sup>16</sup> *See* Answer Ex. A at DEP000249 (Freeburn Decl. ¶ 10); Reply Comments of Progress Energy Florida n/k/a Duke Energy Florida, et al. at 28-29, *In the Matter of Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments*, WC Docket No. 07-245 (Oct. 4, 2010); *see also* Compl. Ex. C at ATT00044-45 (Peters Aff. ¶¶ 18-19); Compl. Ex. D at ATT00070-71 (Dippon Aff. ¶ 38); Reply Ex. C at ATT00408 (Peters Reply Aff. ¶ 37); Reply Ex. D at ATT00416-417 (Dalton Reply Aff. ¶¶ 11-12); Reply Ex. E at ATT00425-426, ATT00428 (Oakley Reply Aff. ¶¶ 4, 10).

<sup>17</sup> Compl. Ex. 1 at ATT00097, ATT00100 (JUA, Arts. VII(D) & (E), VIII(A)).

<sup>18</sup> *See, e.g.*, Ex Parte Letter at 2, WC Docket No. 17-84 (Jan. 29, 2021) ("Duke [and other electric utilities] made clear that, where they have determined that a pole needs replacement due to deterioration, they pay to replace the pole."); *see also* CLEC-2 § 26 at DEP000054 [REDACTED]

distinction is not trivial. AT&T has more than \$139 million invested in poles in North Carolina and South Carolina, expended in excess of \$10 million dollars in each year covered by this dispute to own and maintain those poles, *and* still paid Duke Progress the exorbitant rate of over [REDACTED] per pole to attach to Duke Progress's poles<sup>19</sup>—while AT&T's competitors incurred zero pole ownership and related maintenance costs and paid an approximate \$7.40 new telecom rate to attach to Duke Progress's poles.<sup>20</sup> This disparity puts AT&T at a competitive disadvantage compared to CLECs and cable companies.

3. ***Lack of Expedited Make-Ready and Self-Help Remedies.*** AT&T is competitively disadvantaged by the JUA's lack of language providing for timely make-ready when other attachers must modify (*e.g.*, move or transfer) their facilities before AT&T can attach its facilities to Duke Progress's poles.<sup>21</sup> In fact, the JUA provides no deadlines, much less

[REDACTED]  
WIRELESS-3 § 2.3 at DEP000083 [REDACTED]

[REDACTED]; Ex. 2, Line 2

(Additional license agreement cites).

<sup>19</sup> See Compl. Ex. A at ATT00018-19 (Rhinehart Aff., Ex. R-3); Compl. Ex. B at ATT00028 (Miller Aff. ¶ 8); Compl. Exs. 3-6 at ATT00154-199 (Invoices).

<sup>20</sup> Answer ¶ 12; Duke Progress's Supp. Response to Interrog. No. 3, Ex. 1 at DEP000403-407; *see also Local Competition Order*, 11 FCC Rcd at 16073 (¶ 1156) (“[W]here access is mandated, .... the utility must charge all parties an attachment rate that does not exceed the maximum amount permitted by the formula we have devised for such use”). AT&T's competitors paid even less to attach to AT&T's poles. See Compl. Ex. A at ATT00003 (Rhinehart Aff. ¶ 2 n.1) (stating that AT&T charged new telecom and cable rates that ranged from [REDACTED] per pole in North Carolina and from [REDACTED] per pole in South Carolina during the 2015 through 2019 rental years, assuming 1 foot of space occupied).

<sup>21</sup> See Compl. Ex. 1 at ATT00091-110 (JUA); *see also* Compl. Ex. C at ATT00043-44 (Peters Aff. ¶ 17) (“AT&T generally needs to wait for all existing attachers to sequentially visit the pole and move or relocate their attachments before AT&T can begin the work it requires to attach.”); Reply Ex. C at ATT00407 (Peters Reply Aff. ¶ 36) (AT&T “typically is the last party able to transfer its facilities to [a] replacement pole because it has to wait for the other attachers to complete their transfers first”).

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accelerated deadlines, for make-ready. As a result, AT&T is uniquely subject to “excessive delays,” with “limited remedies” if Duke Progress or AT&T’s competitors do not promptly complete their work.<sup>22</sup> In contrast, AT&T’s competitors are statutorily guaranteed *timely* access to Duke Progress’s poles,<sup>23</sup> and are protected by the Commission’s one-touch make-ready option, make-ready deadlines, and self-help remedies designed to speed their deployment and reduce their costs.<sup>24</sup>

4. ***Costlier Location on the Pole.*** The typical location of AT&T’s facilities at the bottom of the communications space is a competitive disadvantage due to undisputed “costs and risks attendant to the lowest position” on Duke Progress’s poles.<sup>25</sup> As the typical lowest

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<sup>22</sup> *Pole Attachment Order*, 26 FCC Rcd at 5250-51 (¶ 21) (“Evidence in the record reflects that, in the absence of a timeline, pole attachments may be subject to excessive delays.... Beyond generalized problems caused by utility lack of timeliness ..., the record shows pervasive and widespread problems of delays in survey work, delays in make-ready performance, delays caused by a lack of coordination of existing attachers, and other issues.”); *id.* at 5242 (¶ 3) (“The absence of fixed timelines and the potential for delay creates uncertainty that deters investment. [And], if a pole owner does not comply with applicable requirements, the party requesting access may have limited remedies”); *see also* Compl. Ex. C at ATT00043-44 (Peters Aff. ¶ 17); Reply Ex. C at ATT00407 (Peters Reply Aff. ¶ 36).

<sup>23</sup> *See In the Matter of Implementation of Section 224 of the Act A Nat’l Broadband Plan for Our Future*, 25 FCC Rcd 11864, 11883 (¶ 17) (2010).

<sup>24</sup> 47 C.F.R. § 1.1411; *see also Third Report and Order*, 33 FCC Rcd at 7714 (¶ 16) (“With OTMR ..., new attachers will save considerable time in gaining access to poles (with accelerated deadlines for application review, surveys, and make-ready work) and will save substantial costs with one party (rather than multiple parties) doing the work to prepare poles for new attachments.”); *FPL 2020 Order*, 35 FCC Rcd at 5329 (¶ 14 n.56) (explaining that the Commission’s one-touch make-ready regulations were adopted “so that attachment is faster and cheaper”). The Commission’s make-ready regulations do not protect AT&T because they define “new attacher” to mean “a cable television system or telecommunications carrier” and exclude ILECs from the definition of “telecommunications carrier.” 47 C.F.R. §§ 1.1402(h), 1.1411(a)(2); *see also* Compl. Ex. C at ATT00043-44 (Peters Aff. ¶ 17).

<sup>25</sup> Answer ¶ 19; *see also* Compl. Ex. C at ATT00045-46 (Peters Aff. ¶¶ 20-23); Compl. Ex. D at ATT00073-74 (Dippon Aff. ¶ 43); Compl. Ex. 18 at ATT00234-236 (Damage Reports); Reply Ex. C at ATT00407-408 (Peters Reply Aff. ¶¶ 35-36).

attacher, AT&T is most likely to receive a request to temporarily raise its facilities to accommodate an oversized vehicle or a load that exceeds standard vertical clearance; as usually the last to transfer its facilities to a replacement pole, AT&T often must make multiple trips to a pole when other attachers located higher on the pole did not transfer their facilities as scheduled; and AT&T incurs higher repair costs.<sup>26</sup> When a pole leans (*e.g.*, from weather damage, normal wear and tear, or improperly engineered or constructed competitor facilities), the lowest facilities on the pole (typically, those of AT&T) can become low-hanging without notice and vulnerable to being struck by large vehicles.<sup>27</sup> In addition, the lowest facilities are more vulnerable to damage by workers ascending a pole to work on higher-placed facilities.<sup>28</sup> While AT&T does not maintain separate records of damage attributable to its location on a pole and often repairs such damage without reporting it, its records nonetheless reflect those added costs.<sup>29</sup>

AT&T's position as lowest on the pole resulted from history rather than choice.<sup>30</sup> Standard construction practices in the early days of joint use placed AT&T's facilities at the bottom of the communications space because AT&T was the only consistent communications

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<sup>26</sup> Compl. Ex. C at ATT00043-46 (Peters Aff. ¶¶ 17, 20-23); Compl. Ex. D at ATT00073-74 (Dippon Aff. ¶ 43); Compl. Ex. 18 at ATT00234-236 (Damage Reports); Reply Ex. C at ATT00407-408 (Peters Reply Aff. ¶¶ 35-36).

<sup>27</sup> Compl. Ex. C at ATT00045-46 (Peters Aff. ¶¶ 22-23); Compl. Ex. D at ATT00073-74 (Dippon Aff. ¶ 43); Compl. Ex. 18 at ATT00234-236 (Damage Reports).

<sup>28</sup> Compl. Ex. C at ATT00045-46 (Peters Aff. ¶ 22); Compl. Ex. D at ATT00073-74 (Dippon Aff. ¶ 43); Compl. Ex. 18 at ATT00234-236 (Damage Reports).

<sup>29</sup> Compl. Ex. C at ATT00046 (Peters Aff. ¶ 23); Compl. Ex. 18 at ATT00234-236 (Damage Reports).

<sup>30</sup> Compl. Ex. C at ATT00045 (Peters Aff. ¶ 21); Compl. Ex. D at ATT00073-74 (Dippon Aff. ¶ 43); *see also* Letter Order at 4, *Verizon Md. v. Potomac Edison*, Proceeding No. 19-355 (May 22, 2020) (holding that competitive benefits must "derive from the terms and conditions of the joint use agreement rather than Verizon's historical status as an incumbent LEC.").

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attacher on utility poles at that time.<sup>31</sup> That location now continues—despite AT&T’s efforts to change it<sup>32</sup>—because consistency in placement of facilities allows all companies to quickly identify the ownership of facilities on a pole and avoid the physical damage that would result if facilities crisscrossed mid-span.<sup>33</sup> And so, while other communications companies are increasingly placing facilities below AT&T’s with AT&T’s encouragement,<sup>34</sup> the competitive disadvantage associated with the typical location of AT&T’s facilities continues to increase AT&T’s costs relative to its competitors.

**5. Prior Unlawful Allocation of Unused Space.** The JUA does not allocate any particular amount of space to AT&T, but “continue[s the parties’ prior] Joint Use of poles”<sup>35</sup>—something Duke Progress considers sufficient to perpetuate space allocations under the parties’ prior agreement.<sup>36</sup> Duke Progress thus seeks to allocate excess space to AT&T that AT&T does not need, want or use,<sup>37</sup> while Duke Progress’s license agreements provide AT&T’s competitors

<sup>31</sup> Compl. Ex. C at ATT00045 (Peters Aff. ¶ 21); Compl. Ex. D at ATT00073-74 (Dippon Aff. ¶ 43).

<sup>32</sup> See, e.g., *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling, 35 FCC Rcd 7936, 7940 (¶ 9 n.28) (2020) (“*Declaratory Ruling*”); see also Compl. Ex. C at ATT00045 (Peters Aff. ¶ 20); Reply Ex. C at ATT00407 (Peters Reply Aff. ¶ 35); Reply Ex. F at ATT00448 (Dippon Reply Aff. ¶ 25).

<sup>33</sup> Compl. Ex. C at ATT00045 (Peters Aff. ¶ 21); Compl. Ex. D at ATT00073-74 (Dippon Aff. ¶ 43).

<sup>34</sup> See *Declaratory Ruling*, 35 FCC Rcd at 7940 (¶ 9 n.28); see also Compl. Ex. C at ATT00045 (Peters Aff. ¶ 20); Answer Ex. C at DEP000300 (Burlison Decl. ¶ 17); Reply Ex. C at ATT00407 (Peters Reply Aff. ¶ 35).

<sup>35</sup> Compl. Ex. 1 at ATT00093 (JUA, Whereas Clauses).

<sup>36</sup> See Answer ¶ 8, 12, 15, 22, 25, 31.

<sup>37</sup> See Answer Ex. 2 at DEP000140 (superseded 1977 JUA, Art. I(A)(2)). AT&T does not need, want, or use the 3 feet of space that was allocated by the superseded 1977 JUA for existing facilities, future facilities, or any other purpose, and it cannot sublet the space under the terms of

as much space as they require at rates based on the space they actually occupy.<sup>38</sup> This competitive disadvantage has had costly ramifications for AT&T. For the last 25 years, the 1977 JUA's space allocations were unlawful, unenforceable, and unobserved.<sup>39</sup> Yet Duke Progress relied on the superseded space allocation to collect exceptionally high rental rates from AT&T.<sup>40</sup> And, it continued to use that unlawful allocation to stymie rate negotiations and force AT&T to incur the high cost of this pole attachment litigation to obtain the "just and reasonable" rates based on space "actually occupied," as required by law.<sup>41</sup>

the JUA, which does not allocate AT&T any particular amount of space. *See* Compl. Ex. 1 at ATT00091-110 (JUA).

<sup>38</sup> *See, e.g.*, CATV-1 § 1.01 at DEP000006 [REDACTED]; *see also* Ex. 2, Line 5 (Additional license agreement cites); 47 C.F.R. § 1.1406(d)(2) (calculating new telecom rates based on "Space Occupied"); *FPL 2020 Order*, 35 FCC Rcd at 5330 (¶ 16) ("[U]nder the Commission's rate formula, 'space occupied' means space that is 'actually occupied'"); *In Re Amend. of Commission's Rules & Policies Governing Pole Attachments*, 16 FCC Rcd 12103, 12143 (¶ 77) (2001) ("*Consolidated Partial Order*") ("The statutory language prescribes that we allocate costs based on space occupied"); *id.* at 12143 (¶ 78) ("determination of the amount of space occupied" is based on "the amount of space actually occupied"); *In the Matter of Television Cable Serv., Inc.*, 88 FCC.2d 63, 68 (¶ 11) (1981) ("actual physical attachment").

<sup>39</sup> *Local Competition Order*, 11 FCC Rcd at 16079 (¶ 1170) ("Permitting an [I]LEC, for example, to reserve space for local exchange service ... would favor the future needs of the [I]LEC over the current needs of the new LEC. Section 224(f)(1) prohibits such discrimination among telecommunications carriers."); *see also* Compl. Ex. C at ATT00046-47 (Peters Aff. ¶ 24); Reply Ex. C at ATT00401 (Peters Reply Aff. ¶ 27); Reply Ex. D at ATT00420 (Dalton Reply Aff. ¶ 20); Reply Ex. E at ATT00430 (Oakley Reply Aff. ¶ 14).

<sup>40</sup> *See* Compl. Ex. D at ATT00066-69 (Dippon Aff. ¶¶ 30-35); Reply Ex. F at ATT00450-451 (Dippon Reply Aff. ¶¶ 31-32).

<sup>41</sup> *See FPL 2020 Order*, 35 FCC Rcd at 5330 (¶ 16); *see also* Answer Ex. 4 at DEP000174 [REDACTED]; *see also* Compl. Ex. C at ATT00046-47 (Peters Aff. ¶ 24).

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In contrast, Duke Progress's license agreements allow AT&T's competitors [REDACTED],<sup>42</sup> within the same space supposedly allocated to AT&T under the superseded JUA, and the record shows that Duke Progress does in fact routinely rent that space to—and presumably recover associated rent from—other companies.<sup>43</sup> AT&T does not have the same opportunity to sublet space previously allocated on its poles to, but not used by, Duke Progress, as Duke Progress uses far more space than it was allocated on AT&T's poles under the superseded JUA.<sup>44</sup> Hence, only Duke Progress can—and in fact does—benefit by double- and triple-collecting for space already paid for by AT&T, without offset to AT&T.<sup>45</sup>

6. ***Reciprocal Obligations.*** Reciprocal JUA terms impose unique costs on AT&T that Duke Progress's license agreements do not impose on AT&T's competitors.<sup>46</sup> The JUA runs two ways, requiring AT&T to extend to Duke Progress each and every term and

<sup>42</sup> See, e.g., CLEC-2, Ex. D at DEP000068.

<sup>43</sup> Compl. Ex. C at ATT00046-47 (Peters Aff. ¶ 24); Reply Ex. C at ATT00401 (Peters Reply Aff. ¶ 27); Reply Ex. D at ATT00421 (Dalton Reply Aff. ¶ 20); Reply Ex. E at ATT00432-433 (Oakley Reply Aff. ¶ 14 & Ex. O-1); see also Duke Progress's Supp. Response to Interrog. No 3, Ex. 1, at DEP000403-407.

<sup>44</sup> The superseded JUA allocated 8 feet of space to Duke Progress on AT&T's poles. See Answer Ex. 2 at DEP000140 (superseded 1977 JUA, Art. A.1) (reserving 8 feet of space for Duke Progress on AT&T's poles). Duke Progress's "typical horizontal three-phase construction" today requires 8 feet of space, Answer Ex. C at DEP000298 (Burlison Decl. ¶ 14), in addition to 3.33 feet of safety space that "is usable and used by" Duke Progress, *FPL 2020 Order*, 35 FCC Rcd at 5330 (¶ 16).

<sup>45</sup> Compl. Ex. C at ATT00046-47 (Peters Aff. ¶ 24); Compl. Ex. D at ATT00067 (Dippon Aff. ¶ 32); Reply Ex. C at ATT00401 (Peters Reply Aff. ¶ 27); Reply Ex. D at ATT00421 (Dalton Reply Aff. ¶ 20); Reply Ex. E at ATT00432-433 (Oakley Reply Aff. ¶ 14 & Ex. O-1).

<sup>46</sup> Compl. Ex. C at ATT00047-48 (Peters Aff. ¶ 26); Compl. Ex. D at ATT00072-73 (Dippon Aff. ¶ 41); Reply Ex. C at ATT00388 (Peters Reply Aff. ¶ 4); Reply Ex. F at ATT00473-474 (Dippon Reply Aff. ¶ 73).

condition—whether related to pole installation, permitting, bonding, liability, or assignment of rights—for use of AT&T’s poles that Duke Progress provides AT&T.<sup>47</sup> AT&T’s competitors “do not own poles” under Duke Progress’s license agreements, and so they need not incur the cost to accommodate Duke Progress’s facilities on poles<sup>48</sup> or other related responsibilities.<sup>49</sup>

7. ***Evergreen Provision.*** The JUA’s evergreen provision competitively disadvantages AT&T because it locks in the JUA’s exceptionally high rental rates even after the JUA is terminated<sup>50</sup> and requires costly litigation for AT&T to obtain rate relief.<sup>51</sup> AT&T’s

<sup>47</sup> Compl. Ex. 1 at ATT00091-110 (JUA).

<sup>48</sup> Answer Ex. A at DEP000249 (Freeburn Decl. ¶ 10); CLEC-2 § 26 at DEP000054 [REDACTED]; see also Ex. 2, Line 6 (Additional license agreement cites).

<sup>49</sup> *Pole Attachment Order*, 26 FCC Rcd at 5335 (¶ 216 n.654) (“A failure to weigh, and account for, the different rights *and responsibilities* in joint use agreement could lead to marketplace distortions.”) (emphasis added); see also *Potomac Edison Order*, 35 FCC Rcd at 13620 (¶ 32) (finding rates unlawful where “[m]any of the terms in the JUA also are reciprocal, so Verizon must give Potomac Edison the same advantages that Potomac Edison provides Verizon.”); *FPL 2020 Order*, 35 FCC Rcd at 5329 (¶ 15) (“FPL overlooks the fact that AT&T must provide many of the same advantages that FPL provides AT&T.”); *Third Report and Order*, 33 FCC Rcd at 7768 (¶ 123) (requiring utility to prove that the ILEC “receives *net benefits* under its pole attachment agreement with the utility that materially advantage the incumbent LEC over other telecommunications attachers”) (emphasis added); *Verizon Va., LLC v. Va. Elec. & Power Co.*, 32 FCC Rcd 3750, 3760 (¶ 21) (EB 2017) (“*Dominion Order*”) (holding that electric utility did not justify a rate higher than the new telecom rate “[b]y identifying as alleged ‘benefits’ to Verizon services that Verizon is likewise required to extend to Dominion under the Joint Use Agreements”).

<sup>50</sup> Compl. Ex. 1 at ATT00104 (JUA, Art. XVII(B)). Under the evergreen provision, AT&T can maintain its existing attachments on Duke Progress’s poles after the JUA is terminated. AT&T’s competitors also have this right under federal law. See 47 U.S.C. § 224(f); *Local Competition Order*, 11 FCC Rcd at 16059-60 (¶ 1123) (“Pursuant to section 224(f)(1), ... no [pole owner] can ... impede ... the installation and maintenance of telecommunications and cable equipment...”); *id.* at 16074 (¶ 1160) (“[A] utility’s obligation to permit access under section 224(f) does not depend upon the execution of a formal written attachment agreement”); see also *Third Report and Order*, 33 FCC Rcd at 7731 (¶ 50) (federal statutory rights “may not be defeated by private contractual provisions”).

<sup>51</sup> See *Potomac Edison Order*, 35 FCC Rcd at 13616 (¶ 23) (“even if terminated, [the JUA] would require Verizon to continue paying the JUA rate indefinitely for all existing



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competitors, in contrast, are guaranteed much lower new telecom rates by statute, regulation, and license agreement,<sup>52</sup> which “reduce[s] disputes and costly litigation” for them.<sup>53</sup>

**B. Duke Progress’s Make-Ready Measurements Are Not Valid, Representative, or Accurate.**

Duke Progress’s measurement data falls far short of the standard set by the Commission’s rules, is rife with error, and is irrelevant without comparable data about AT&T’s competitor’s facilities, though it would *reduce* the rate AT&T pays if accepted. Duke Progress describes its measurements as arising from “field surveys,” but those “surveys” evaluated information that is not pertinent to this dispute and do not comprise a statistically valid or representative survey of Duke Progress’s poles required for rate calculations.<sup>54</sup>

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attachments”); *FPL 2020 Order*, 35 FCC Rcd at 5326 (¶ 11) (“AT&T may not unilaterally terminate the JUA or simply wait for it to expire in order to ‘obtain a different arrangement.’ Nor is AT&T able to obtain a lower rate without FPL’s concurrence, because the JUA states that, unless both parties agree, the rates for joint use poles ‘shall remain in full force and effect.’”); *FPL 2015 Order*, 30 FCC Rcd at 1150 (¶ 25) (absent litigation, FPL “could force Verizon to pay the relatively high Agreement Rates for as long as its attachments remain on [FPL]’s poles pursuant to the evergreen clause”); *see also* Reply Ex. A at ATT00361-362 (Rhinehart Reply Aff. ¶ 26); Reply Ex. B at ATT00376-378 (Miller Reply Aff. ¶¶ 3-4); Reply Ex. C at ATT00388-389 (Peters Reply Aff. ¶ 5).

<sup>52</sup> 47 U.S.C. § 224(e); 47 C.F.R. § 1.1406(d); Answer ¶ 12; Duke Progress’s Supp. Response to Interrog. No. 3, Ex. 1 at DEP000403-407; CATV-3 § 6.1 at DEP000550 [REDACTED]; *see also* Ex. 2, Line 7 (Additional license agreement cites).

<sup>53</sup> *See Pole Attachment Order*, 26 FCC Rcd at 5317 (¶ 174) (adopting new telecom formula to “reduce disputes and costly litigation” for CLECs and cable companies); *Local Competition Order*, 11 FCC Rcd at 16073 (¶ 1156) (“[W]here access is mandated ... the utility must charge all parties an attachment rate that does not exceed the maximum amount permitted by the formula we have devised for such use”).

<sup>54</sup> 47 C.F.R. § 1.363; *In Re Amend. of Rules & Policies Governing Pole Attachments*, 15 FCC Rcd 6453, 6522 (¶ 23 n.103) (2000) (“We have stated that a survey that yields a statistically reliable result would be acceptable.... Such a survey must meet the requirements of Section 1.363 of the Commission’s Rules.”); *In the Matter of Adoption of Rules for the Regulation of Cable Television Pole Attachments*, 72 FCC.2d 59, 79 (¶ 21 n.24) (1979) (“All such sample surveys and statistical studies must meet the standards set forth in Section 1.363(a) of our Rules.”).

Duke Progress tries to repurpose flawed data collected for an entirely different purpose—“make ready surveys” performed “as part of the attachment process for pole attachment applications submitted by third parties.”<sup>55</sup> Make-ready surveys occur *before* make-ready work is performed and consequently are outdated snapshots of irrelevant history, as the subsequent make-ready work can often change the location of facilities on a pole.<sup>56</sup> For example, AT&T routinely lowers its facilities as part of the make-ready process,<sup>57</sup> and in rare cases, Duke Progress replaces a pole to create additional capacity.<sup>58</sup>

Make-ready data, by its nature, also creates a biased sample, evaluating clusters of poles in areas where third-party deployment is active and completely ignoring poles in other areas.<sup>59</sup> Duke Progress’s data includes several poles down a single pole lead and sites [REDACTED] of the poles in just [REDACTED] counties covered by the JUA.<sup>60</sup> This is not a representative distribution of poles.

<sup>55</sup> Duke Progress’s Response to Interrog. No. 8; Duke Progress’s Supp. Response to Interrog. No. 8 & Ex. 4 at DEP001364-1381; *see also* Answer Ex. A at DEP000250-251 (Freeburn Decl. ¶ 13).

<sup>56</sup> *See Pole Attachment Order*, 26 FCC Rcd at 5252 (¶ 22) (describing the “survey phase” as the first step in pole attachment process when “an engineering study ... determine[s] whether and where attachment is feasible, and what make-ready is required”); *see also* CLEC-2 § 5.3 at DEP000041 [REDACTED]

<sup>57</sup> Reply Ex. C at ATT00396 (Peters Reply Aff. ¶ 17).

<sup>58</sup> Duke Initial Comments at 16-17 (about 0.024% of electric utility poles required replacement in 2019 due to lack of capacity); CATV-1 § 3.06 at DEP000009-10.

<sup>59</sup> *See* Ex. 5 (Make-ready pole locations as compared to overlapping service area).

<sup>60</sup> *See* Duke Progress’s Response to Interrog. No. 8, Ex. 4 (Excel file produced Mar. 3, 2021); Ex. 6 (Make-ready county distribution); *see also In the Matter of Connect Am. Fund*, 34 FCC Rcd 10395, 10406 (¶ 32 n.85) (2019) (“To be statistically valid, the sampled population should be representative of the population and not biased in a systematic manner.”).

Duke Progress's make-ready data also represents a non-random collection of only [REDACTED] identifiable poles out of the 178,662 poles under the JUA and the 148,064 joint use poles owned by Duke Progress.<sup>61</sup> Duke Progress claimed that the "field surveys [were] performed on 1,039 DEP poles to which AT&T is attached."<sup>62</sup> But an inspection of Duke Progress's underlying data, produced only recently, reveals that Duke Progress could not identify the pole tag or location for [REDACTED] of its entries, and the remainder include so many duplicate entries—in the form of duplicate pole tags and GPS coordinates—that they reduce the data to just [REDACTED] unique poles.<sup>63</sup> And AT&T is *not* even attached to all [REDACTED] poles, meaning that Duke Progress seeks to use measurements of AT&T's competitor's facilities to set rates for AT&T.<sup>64</sup> Further, even the data for the [REDACTED]

<sup>61</sup> See Joint Statement ¶ 7; Ex. 7 (Unique pole tags).

<sup>62</sup> Answer Ex. A at DEP000250 (Freeburn Decl. ¶ 13); *see also* Duke Progress's Response to Interrog. No. 8; Duke Progress's Supp. Response to Interrog. No. 8 & Ex. 4 at DEP001364-1381.

<sup>63</sup> See Ex. 7 (Unique pole tags). In addition to the [REDACTED] unique poles, Duke Progress's data includes [REDACTED] poles for which it could not provide location information, making it impossible to verify the data for those poles or determine how many duplicate poles are included. See Attachment to Email from E. Langley to C. Huther, et al. (Mar. 4, 2021). Duke Progress did not provide location information for any poles until March 3, 2021, about 11 weeks after AT&T filed its Reply. See Email from E. Langley (Mar. 4, 2021).

<sup>64</sup> See, e.g., Ex. 5 (Make-ready pole locations as compared to overlapping service area). The integrity of Duke Progress's field survey data is further called into question by a separate set of data created by Duke Progress's contractor, VentureSum. See Duke Progress's Supp. Resp. to Interrog. No. 8, Ex. 3. According to the VentureSum data, [REDACTED] poles in Duke Progress's field survey data are AT&T-owned, [REDACTED] have *no* AT&T attachment, and [REDACTED] is listed with both AT&T and Duke Progress as the owner. See Duke Progress's Supp. Resp. to Interrog. No. 8, Ex. 3 (Pole Tags [REDACTED])

unique poles is unreliable, as entries for the same pole contain different measurements, leaving uncertainty as to which duplicate entry is accurate.<sup>65</sup>

Over [REDACTED] poles appear at least 3 times in Duke Progress's data; one of the poles appearing 8 times has such varied measurements that the difference between its "attachment height" and "midspan height" ranges from [REDACTED].<sup>66</sup> Duke Progress also provided no standards for its measurements; even a cursory look at poles in the field<sup>67</sup> confirms that it alleges exceptionally high "midspan height" measurements that are either incorrect or based on the features of the local terrain (such as a rise between two poles)—rather than sag in AT&T's cable.<sup>68</sup>

Because Duke Progress's make-ready data is so fundamentally flawed, it must be rejected out of hand. But even if the Commission were to consider the data, the only relevant information it provides relates to pole height. The alleged values for attachment height and midspan height are irrelevant "under the Commission's rate formula[s]," which calculate rates based on "space

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<sup>65</sup> See, e.g., Ex. 8 (Data sorted by pole tag); Ex. 9 (Pole tag [REDACTED] example).

<sup>66</sup> See Ex. 7 (Unique pole tags); Ex. 9 (Pole tag [REDACTED] example).

<sup>67</sup> Duke Progress did not produce location information for the poles until March 3, 2021, which prevented AT&T from completing field reviews in time to rebut Duke Progress's allegations with field evidence in AT&T's December 18, 2020 Reply. See, e.g., Reply Ex. D at ATT00419-420 (Dalton Reply Aff. ¶¶ 17-18); Reply Ex. E at ATT00429-430 (Oakley Reply Aff. ¶¶ 12-13). AT&T, as a result, relies on publicly available Internet information, for which it has attached a hard copy consistent with the Commission's September 22, 2020 Scheduling Order.

<sup>68</sup> See Ex. 10 (Google street-view examples). While sag is not pertinent to rate calculations because the Commission sets rates based on actual space occupied and not sag, Duke Progress did not even capture sag correctly as these examples depict taut AT&T cables, even where other facilities on the pole (including Duke Progress's) show significant sag. See *id.*; see also *FPL 2020 Order*, 35 FCC Rcd at 5330 (¶ 16) ("[U]nder the Commission's rate formula, 'space occupied' means space that is 'actually occupied'"); *Consolidated Partial Order*, 16 FCC Rcd at 12143 (¶ 77) ("The statutory language prescribes that we allocate costs based on space occupied, not load capacity.")

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occupied” on the pole.<sup>69</sup> And Duke Progress’s alleged value for the difference between attachment height and midspan height is meaningless “for comparative purposes as [Duke Progress] does not purport to have ... the same information [about AT&T]’s competitors.”<sup>70</sup> In contrast, Duke Progress’s pole height value is an input to the Commission’s rate formulas and is the same for AT&T and all other attachers to the pole. And if Duke Progress’s average pole height of at least [REDACTED] feet is drawn from the make-ready data and used in place of the Commission’s 37.5-foot presumption, rental rates would decrease.<sup>71</sup>

**C. AT&T Correctly Calculated the New and Old Telecom Rates.**

The properly calculated new telecom rate is about \$7.40 per pole and the properly calculated old telecom rate is about \$11 per pole because, by rule, the old telecom rate is about 1.5 times the new telecom rate.<sup>72</sup> Duke Progress argues that rates up to [REDACTED] higher should result from these formulas,<sup>73</sup> but its calculations violate the Commission’s regulations and orders in at least three respects.<sup>74</sup>

<sup>69</sup> See *FPL 2020 Order*, 35 FCC Rcd at 5330 (¶ 16) (emphasis added); see also, Section C.1, below.

<sup>70</sup> Letter Ruling at 3, *Verizon Md. v. Potomac Edison*, Proceeding No. 19-355 (May 22, 2020).

<sup>71</sup> 47 C.F.R. § 1.1410 (“The pole height is presumed to be 37.5 feet.”). This average was calculated using the [REDACTED] poles in Duke Progress’s data that have unique pole tags. See Ex. 11 (Pole height calculation).

<sup>72</sup> 47 C.F.R. § 1.1406(d); see also Reply Ex. A at ATT00349 (Rhinehart Reply Aff. ¶ 5 n.12).

<sup>73</sup> Duke Progress alleges that the 2019 new telecom rate should be [REDACTED] per pole, which is more than [REDACTED] higher per pole than a properly calculated new telecom rate, and that the 2019 old telecom rate should be [REDACTED] per pole, which is nearly [REDACTED] per pole higher than a properly calculated old telecom rate. See Answer ¶¶ 12, 22.

<sup>74</sup> To reduce areas of dispute, AT&T stipulated for purposes of this case to certain inputs that do not have a material impact on the resulting rate. While the properly calculated new and old telecom rates remain those in AT&T’s pleadings, see Compl. Ex. A at ATT00003-07, ATT00013-14 (Rhinehart Aff. ¶¶ 4-11, 16-17 & Ex. R-1); Reply Ex. A at ATT00347-357, ATT00368-369 (Rhinehart Reply Aff. ¶¶ 2-18 & Ex. R-5), AT&T’s stipulations produce new

# 1. Space Occupied and Calculation of Per-Pole Rates

The proper input for space occupied by AT&T is the 1-foot value established by the Commission's regulations.<sup>75</sup> Duke Progress rejects longstanding Commission precedent to incorrectly claim that AT&T occupies over [REDACTED] feet of space by combining 3.33 feet of safety space that "should not be attributed to AT&T"<sup>76</sup> with [REDACTED] feet calculated using its flawed make-ready data.<sup>77</sup> Duke Progress also multiplies the new telecom rate by [REDACTED] feet of space to calculate a per-pole rate.<sup>78</sup> Duke Progress is wrong at each step.

First, the safety space is attributable to Duke Progress, not to AT&T. Commission rules permit Duke Progress to charge attachers only for the physical space occupied by their attachments on the pole,<sup>79</sup> which is the "Space Occupied" input to the "Space Factor" in each FCC rate formula.<sup>80</sup> Consistent therewith, "the Commission has long held that the communication safety space is for the benefit of the electric utility, not communications attachers."<sup>81</sup> Duke Progress acknowledges that it cannot charge AT&T's competitors for the

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telecom rates for the 2017 through 2020 rental years of \$7.15, \$6.70, \$7.84, and \$7.33 per pole, respectively, and old telecom rates of \$10.84, \$10.15, \$11.88 and \$11.11 per pole, respectively. See Ex. 4.

<sup>75</sup> 47 C.F.R. § 1.1410.

<sup>76</sup> *FPL 2020 Order*, 35 FCC Rcd at 5330 (¶ 16) (emphasis added).

<sup>77</sup> See Section II, above; see also Answer ¶ 12; Answer Ex. A at DEP000251 (Freeburn Decl. ¶ 14).

<sup>78</sup> See Answer ¶ 12.

<sup>79</sup> *FPL 2020 Order*, 35 FCC Rcd at 5330 (¶ 16) ("[Safety] space should *not* be attributed to AT&T because ... AT&T's attachments do not actually occupy the communications safety space.") (emphasis added).

<sup>80</sup> 47 C.F.R. § 1.1406(d)(2) (calculating new telecom rates based on "Space Occupied"); see also 47 C.F.R. § 1.1406(d)(1) (calculating cable rates based on "Space Occupied"); 47 C.F.R. § 1.1409(e)(2) (2010) (calculating old telecom rates based on "Space Occupied").

<sup>81</sup> *FPL 2020 Order*, 35 FCC Rcd at 5330 (¶ 16).

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safety space because it “is usable and used by the electric utility.”<sup>82</sup> Yet, in an effort to perpetuate the excessive rental rates it has long charged AT&T, Duke Progress argues that AT&T is the cause of and should be allocated that safety space, despite the Enforcement Bureau’s numerous (and recent) contrary rulings.<sup>83</sup> The Commission should disregard Duke Progress’s plea to ignore its prior rulings.

*Second*, Duke Progress’s make-ready measurements do not rebut the Commission’s presumptive space occupied input because they are not statistically valid or accurate for reasons detailed above.<sup>84</sup> They are also legally irrelevant. Duke Progress argues that AT&T should be charged for unoccupied space *below* AT&T’s facilities if the facilities are not attached at the absolute lowest point possible on the poles.<sup>85</sup> But under the Commission’s rate formula, ‘space occupied’ means space ‘actually occupied’ on— *i.e.*, the “actual physical attachment” to—the poles.<sup>86</sup> AT&T’s attachments do not “actually occupy” space below its attachments.<sup>87</sup> And

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<sup>82</sup> Answer ¶ 12 n.38 (“Given that the Commission has already determined that CATV and CLEC attachers should not bear this cost, this cost must fall to AT&T ....”); *see also Consolidated Partial Order*, 16 FCC Rcd at 12130 (¶ 51) (holding “the 40-inch safety space ... is usable and used by the electric utility”); *Television Cable Serv., Inc. v. Monongahela Power Co.*, 88 FCC.2d 63, 68 (¶¶ 10-11) (1981) (rejecting argument that “the 40-inch safety space” should be added “to the 12 inches regularly allotted to [a cable attacher] to compute the space occupied”).

<sup>83</sup> *See* Answer ¶¶ 12, 16, 25, 31. In fact, the “safety space” is rarely even adjacent to AT&T’s facilities, which are typically the lowest on the pole, whereas the safety space divides Duke Progress’s facilities from the highest communications attachments on the pole. *See* Reply Ex. C at ATT00395 (Peters Reply Aff. ¶ 15); Reply Ex. F at ATT00446 (Dippon Reply Aff. ¶ 22).

<sup>84</sup> *See* Section II, above.

<sup>85</sup> *See* Answer ¶ 12, 16, 25, 31; Answer Ex. A at DEP000248 (Freeburn Decl. ¶ 9); *id.* at DEP000250-251 (Freeburn Decl. ¶ 13) (stating that [REDACTED] feet was the difference between the “average height of AT&T’s highest attachment” and 18 feet, which Duke Progress says is “generally” the “lowest point of attachment” on a pole).

<sup>86</sup> *FPL 2020 Order*, 35 FCC Rcd at 5330 (¶ 16); *Television Cable Serv.*, 88 FCC.2d at 68 (¶ 11).

<sup>87</sup> *Potomac Edison Order*, 35 FCC Rcd at 13624 (¶ 37) (rejecting assumption that an ILEC occupies space below its attachments).

Duke Progress's measurements fail to even show how high AT&T's facilities are placed above the lowest point possible on a pole. Duke Progress did not determine the ground clearance required at any location; instead, it relies on a *presumption* that the average minimum ground clearance is 18 feet.<sup>88</sup> Even if that presumption were true on the facts of this case (Duke Progress has put forward no evidence establishing that it is), that is just a minimum and does not establish the appropriate or approved height for any given attachment on a utility pole.<sup>89</sup> Mere conjecture is not evidence sufficient to rebut the Commission's 1-foot space occupied presumption.

*Third*, Duke Progress improperly multiplies its new telecom rates by its alleged space occupied input of [REDACTED] feet,<sup>90</sup> which would be improper even if Duke Progress had valid survey data showing that AT&T occupied more than 1 foot of space, on average, on Duke Progress's poles.<sup>91</sup> If a pole owner has sufficient survey data to show that an attacher occupies more than 1 foot of space, on average, it may adjust the "space occupied" input in the rate formula to account for that additional space—as Duke Progress's witness did when calculating old telecom rates in

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<sup>88</sup> *In re Amendment of Rules & Policies Governing Pole Attachments*, 15 FCC Rcd 6453, 6465 (¶ 16) (2000) (cited at Answer ¶ 12). Ground clearance is highly variable. *See id.* at 6468 (¶ 23) (noting that electric utilities argued that "the lowest attachment on a pole must be at least 19'8" from the ground" and finding an average 18 foot figure accounts for site-specific variables, "such as differing pole heights, ... whether the wires or cables cross over railroad tracks, roads, or driveways and the amount of voltage transferred through the cables"); *see also* Reply Ex. C at ATT0039-397 (Peters Reply Aff. ¶¶ 18-20); Reply Ex. D at ATT00419-420 (Dalton Reply Aff. ¶¶ 17-18); Reply Ex. E at ATT00425-426, ATT00429 (Oakley Reply Aff. ¶¶ 4, 12).

<sup>89</sup> *See* Reply Ex. C at ATT00397 (Peters Reply Aff. ¶¶ 19-20).

<sup>90</sup> Answer ¶ 12.

<sup>91</sup> *See* Reply Ex. A at ATT00355-357 (Rhinehart Reply Aff. ¶¶ 15-17); Reply Ex. F at ATT00445 (Dippon Reply Aff. ¶ 20).



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her declaration.<sup>92</sup> A pole owner may *not* multiply a 1-foot telecom rate (new or old) by the amount of space occupied. As the Commission has made clear for decades, doing so would violate the statutory requirement that the unusable space on the pole be equally divided among attaching entities without regard to the amount of pole space occupied, and would allow Duke Progress to substantially over-recover.<sup>93</sup>

## 2. Average Number of Attaching Entities

The proper input for the average number of attaching entities on Duke Progress's poles is 5 because Duke Progress has not "establish[ed] its own presumptive average" to use when calculating rates for "*all* attaching entities" as required.<sup>94</sup> Duke Progress instead asks to single-

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<sup>92</sup> See Answer Ex. D at DEP000308-309 (Harrington Decl. ¶ 16); *see also* 47 C.F.R. § 1.1406(d); Reply Ex. A at ATT00355 (Rhinehart Reply Aff. ¶ 15); Reply Ex. F at ATT00445 (Dippon Reply Aff. ¶ 20).

<sup>93</sup> 47 U.S.C. § 224(e)(2) (requiring "equal apportionment of [unusable space] costs among all attaching entities"); *see also In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996*, 13 FCC Rcd 6777, 6805 (¶ 57) (1998) (rejecting proposal "that entities using more than one foot be counted as a separate entity for each foot or increment thereof" because "[w]e are ... convinced that the alternative proposal is inconsistent with the plain meaning of Section 224(e) which apportions the cost of unusable space 'under an equal apportionment of such costs among all attaching entities.'"); *see also id.* at 6800 (¶ 45) ("Under Section 224(e)(2), the number of attaching entities is significant because the costs of the unusable space assessed to each entity decreases as the number of entities increases."); Reply Ex. A at ATT00355-357 (Rhinehart Reply Aff. ¶¶ 15-17); Reply Ex. F at ATT00445 (Dippon Reply Aff. ¶ 20).

<sup>94</sup> 47 C.F.R. § 1.1409(d) (emphasis added). The presumptive input of 5 applies because the parties' overlapping service areas includes Raleigh, North Carolina and Florence County, South Carolina, which are urbanized areas with a population greater than 50,000. 47 C.F.R. § 1.1409(c); *see also* Compl. Ex. A at ATT00004-05 (Rhinehart Aff. ¶¶ 6-7); Compl. Ex. B at ATT00027 (Miller Aff. ¶ 6).

out AT&T for a [REDACTED] attaching entity value,<sup>95</sup> but this selective use of a generally applicable input is not permitted under the Commission's regulations.<sup>96</sup>

Duke Progress also lacks accurate and reliable data to support its alleged [REDACTED] value. It relies on a table with the findings of its contractor, VentureSum,<sup>97</sup> without any of the information needed to assess the reliability or accuracy of those findings absent a full field review of 148,065 poles.<sup>98</sup> Some flaws, however, are apparent without a field review.<sup>99</sup> VentureSum's findings, for example, state that [REDACTED] poles surveyed have 6 attaching entities, but the data that is supposed to substantiate that report includes nearly 20 times as many poles with 5 attaching entities.<sup>100</sup> VentureSum similarly undercounted the poles with 6 or more attaching entities, stating there is just [REDACTED] pole when its data shows at least [REDACTED].<sup>101</sup> And so, without accurate or properly

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<sup>95</sup> Compare Answer Ex. A at DEP000260 (Freeburn Decl. ¶ 34) and Answer Ex. D at DEP00308-309 (Harrington Decl. ¶ 16) with Interrog. Resp., Ex. 3 at DEP000111-114 (calculating rates for AT&T's competitors using the FCC's presumptive inputs).

<sup>96</sup> See 47 C.F.R. § 1.1409(d).

<sup>97</sup> See Duke Progress's Supp. Response to Interrog. 8, Exs. 3, 5 at DEP001383.

<sup>98</sup> See 47 C.F.R. § 1.363(b) (requiring "a clear statement of the study plan, all relevant assumptions and a description of the techniques of data collection"); see also AT&T Interrogatory No. 8 (requesting all data, including "the accuracy requirements, if any, imposed or related to the compilation or collection of the data, and the rules, parameters, [and] guidelines upon which the data was collected"). AT&T does not otherwise have access to this information. See AT&T Interrogatories, p.1; Reply Ex. A at ATT00355 (Rhinehart Reply Aff. ¶ 14).

<sup>99</sup> See Duke Progress's Supp. Response to Interrog. 8, Exs. 3, 5 at DEP1383.

<sup>100</sup> Compare Duke Progress's Supp. Response to Interrog. 8, Ex. 3 (showing [REDACTED] Duke Progress poles with AT&T attachments as having 6 attaching entities) with *id.*, Ex. 5 at DEP001383 (reporting that [REDACTED] Duke Progress poles with AT&T attachments have 6 attaching entities).

<sup>101</sup> Compare Duke Progress's Supp. Response to Interrog. 8, Ex. 3 (showing [REDACTED] Duke Progress poles with AT&T attachments as having 7 or more attaching entities) with *id.*, Ex. 5 at DEP001383 (reporting that [REDACTED] Duke Progress pole with AT&T attachments has 7 attaching entities).

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supported data under the Commission's rules, the correct input for the average number of attaching entities is the Commission's presumptive input of 5 that Duke Progress uses to calculate rates for AT&T's competitors.<sup>102</sup>

### 3. Cost Inputs

When calculating its net bare pole cost and carrying charge rate, Duke Progress departs from the FCC's methodology in 2 ways. *First*, for the "Gross Plant Investment (Total Plant)" input to the administrative and taxes elements of the carrying charge, Duke Progress excludes portions of its plant investment (namely, plant leased to others, held for future use, construction work in progress, and acquisition adjustments).<sup>103</sup> But "Gross Plant Investment (*Total Plant*)"<sup>104</sup> by definition requires the entirety (*i.e.*, the total) of Duke Progress's investment,<sup>105</sup> so AT&T's correctly uses the amount Duke Progress reported for "Total Utility Plant."<sup>106</sup>

*Second*, Duke Progress improperly calculates the "taxes element" of the carrying charge rate by adding investment in nuclear fuel, materials, and assemblies to the denominator of the equation.<sup>107</sup> The Commission's formula for the taxes element is as follows:<sup>108</sup>

<sup>102</sup> 47 C.F.R. § 1.1409(c); Interrog. Resp., Ex. 3 at DEP000111-114; *see also* Answer Ex. D at DEP000308 (Harrington Decl. ¶ 15) ("It is DEP's intent to prepare an accurate, objective, and uniform rate applicable to all cable and telecom attaching entities within each jurisdiction.").

<sup>103</sup> *See* Ex. 12 (Line No. 8(c), FERC Form 1, p.200). Duke Progress pairs the lesser investment with the depreciation associated with the lesser investment. *See id.* (Line No. 18(c), FERC Form 1, p.200).

<sup>104</sup> *See Consolidated Partial Order*, 16 FCC Rcd at 12176 (App. E-2) (emphasis added); *see also, e.g., id.* at (¶ 41) ("gross total plant").

<sup>105</sup> *See* Black's Law Dictionary (11th ed. 2019) (defining "total" as "[w]hole; not divided; full; complete").

<sup>106</sup> *See* Ex. 12 (Line No. 13(c), FERC Form 1, p.200). AT&T correctly pairs the total investment with the depreciation associated with the total investment. *See id.* (Line No. 14(c), FERC Form 1, p.200).

<sup>107</sup> *See* Answer Ex. D at DEP000307-308 (Harrington Decl. ¶ 13).

<sup>108</sup> *See Consolidated Partial Order*, 16 FCC Rcd at 12176 (App. E-2).

$$\text{Taxes Element} = \frac{\text{Accounts } 408.1 + 409.1 + 410.1 + 411.4 - 411.1}{\text{Gross Plant Investment (Total Plant)} - \text{Accumulated Depreciation (Account 108)} - \text{Accumulated Deferred Taxes (Plant) (Account 190,281 - 283)}}$$

Investment in nuclear fuel, materials, and assemblies is not part of Gross Plant Investment (Total Plant) reported by Duke Progress on its FERC 1 (and it certainly is not part of the only other denominator components, Accumulated Depreciation or Accumulated Deferred Taxes (Plant)). Therefore, that investment cannot be included in the denominator of the Commission's tax element formula.

Duke Progress argues that investment in nuclear fuel, materials, and assemblies should be added to the denominator of the formula because [REDACTED]

[REDACTED] in FERC account 282, which is also in the denominator.<sup>109</sup> But a desire to match or balance investments and expenses is not grounds to deviate from the Commission-adopted tax element formula that AT&T applied.<sup>110</sup> And, Duke Progress's desire to balance these nuclear power related investments and expenses is inconsistent with how it calculates other parts of the rate formula. FERC account 282 is *also* used to calculate net pole investment and the administrative element of the carrying charge rate, but Duke Progress makes no similar nuclear fuel adjustment when calculating those inputs.<sup>111</sup> Moreover, ensuring such consistency "to eliminate other mismatches between investments and expenses" would "unduly complicate the pole attachment rate process."<sup>112</sup> For these reasons, the

<sup>109</sup> Answer Ex. D at DEP000307-308 (Harrington Decl. ¶ 13).

<sup>110</sup> See *American Cablesystems of Florida, Ltd. v. Florida Power and Light Co.*, 10 FCC Rcd 10934, 10935 (¶ 10) (1995) ("*American Cablesystems Order*").

<sup>111</sup> See Answer Ex. D at DEP000315-316 (Harrington Decl., Ex. D-3, lines 23 & B3).

<sup>112</sup> *American Cablesystems Order*, 10 FCC Rcd at 10935 (¶ 10).


Commission's adopted tax element formula controls and it does not include investment in nuclear fuel, materials, and assemblies.<sup>113</sup>

### III. CONCLUSION

For the foregoing reasons, and those detailed in AT&T's other filings, AT&T respectfully requests that the Commission grant AT&T's Pole Attachment Complaint in full.

Respectfully submitted,

Christopher S. Huther  
 Claire J. Evans  
 Frank Scaduto  
 WILEY REIN LLP  
 1776 K Street NW  
 Washington, DC 20006  
 (202) 719-7000  
 chuther@wiley.law  
 cevans@wiley.law  
 fscaduto@wiley.law

By:   
 Robert Vitanza  
 David J. Chorzempa  
 David Lawson  
 AT&T SERVICES, INC.  
 1120 20th Street NW, Suite 1000  
 Washington, DC 20036  
 (214) 757-3357

*Attorneys for BellSouth Telecommunications,  
 LLC d/b/a AT&T North Carolina and  
 AT&T South Carolina*

Dated: April 8, 2021

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<sup>113</sup> See *Telecable of Piedmont, Inc. v. Duke Power Co.*, 10 FCC Rcd 10898, 10901 (¶ 22) (1995) (“Duke has provided no persuasive argument for deviating from the requirements of the Pole Attachment Order and, thus, we see no reason why this rule would be inapplicable to Duke.”); see also, e.g., *In the Matter of Views on Learning, Inc.*, FCC 21-1, 2021 WL 100415, at \*15 (FCC Jan. 7, 2021) (“[I]t is elementary that an agency must adhere to its own rules and regulations.”) (citation and quotation omitted).

**RULE 1.721(M) VERIFICATION**

I, Robert Vitanza, as signatory to this submission, hereby verify that I have read this Initial Supplemental Brief and, to the best of my knowledge, information, and belief formed after reasonably inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of the proceeding.

  
Robert Vitanza

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## CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2021, I caused a copy of the foregoing Initial

Supplemental Brief to be served on the following (service method indicated):

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
9050 Junction Drive  
Annapolis Junction, MD 20701  
(confidential version by overnight delivery;  
public version by ECFS)

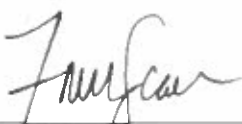
Eric B. Langley  
Robin F. Bromberg  
Robert R. Zalanka  
Langley & Bromberg LLC  
2700 U.S. Highway 280  
Suite 240E  
Birmingham, AL 35223  
(confidential and public versions by email)

Rosemary H. McEnery  
Michael Engel  
Lisa Boehley  
Lisa B. Griffin  
Lisa J. Saks  
Federal Communications Commission  
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Kimberly D. Bose, Secretary  
Nathaniel J. Davis, Sr., Deputy Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426  
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North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, NC 27699  
(public version by overnight delivery)

Public Service Commission of South Carolina  
101 Executive Center Drive  
Suite 100  
Columbia, SC 29210  
(public version by overnight delivery)

  
 Frank Scaduto

## PUBLIC VERSION

**Before the  
Federal Communications Commission  
Washington, DC 20554**

BELLSOUTH  
TELECOMMUNICATIONS, LLC  
d/b/a AT&T NORTH CAROLINA and  
d/b/a AT&T SOUTH CAROLINA,

Complainant,

v.

DUKE ENERGY PROGRESS, LLC,

Defendant.

Proceeding No. 20-293  
Bureau ID No. EB-20-MD-004

**INITIAL SUPPLEMENTAL BRIEF EXHIBITS**

1. License Agreement Designations and Associated Bates Nos.
2. Additional License Agreement Cites Substantiating AT&T's Competitive Disadvantages Under the JUA
3. Joint Summary of Agreed-Upon or Stipulated Inputs
4. Updated Rate Calculations, Showing Agreed-Upon, Stipulated, and Disputed Inputs
5. Pole Locations from Duke Progress's Make-Ready Data as Compared to the Parties' Overlapping Service Area
6. Pole Location Distribution throughout Counties Served by Both Parties
7. [REDACTED] Unique Pole Tags in Duke Florida's Make-Ready Data
8. Duke Florida's Make-Ready Data Sorted by Pole Tag
9. Duke Florida's Make-Ready Data regarding Pole Tag [REDACTED]
10. Google Street View Examples of Poles in Duke Progress's Make-Ready Data
11. Calculation of Pole Height from Duke Progress's Make-Ready Data
12. Page 200 of Duke Progress's FERC Form 1



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# **Exhibit 1**

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License Agreement Designations

Agreement	Bates Number Range
CATV-1	DEP000006-DEP000026
CATV-2	DEP000427-DEP000459
CATV-3	DEP000541-DEP000564
CATV-4	DEP000583-DEP000614
CATV-5	DEP000676-DEP000693
CATV-6	DEP000974-DEP001010
CATV-7	DEP001011-DEP001041
CATV-8	DEP001216-DEP001240
CATV-9	DEP001241-DEP001265
CATV-10	DEP001266-DEP001290
CLEC-1	DEP000409-DEP000426
CLEC-2	DEP000027-DEP000072
CLEC-3	DEP000460-DEP000477
CLEC-4	DEP000507-DEP000540
CLEC-5	DEP000565-DEP000582
CLEC-6	DEP000647-DEP000675
CLEC-7	DEP000694-DEP000733
CLEC-8	DEP000734-DEP000752
CLEC-9	DEP000753-DEP000773
CLEC-10	DEP000819-DEP000836
CLEC-11	DEP000837-DEP000870
CLEC-12	DEP000871-DEP000893
CLEC-13	DEP000894-DEP000910
CLEC-14	DEP000911-DEP000930
CLEC-15	DEP001042-DEP001082
CLEC-16	DEP001083-DEP001099
CLEC-17	DEP001100-DEP001117
CLEC-18	DEP001118-DEP001151
CLEC-19	DEP001152-DEP001169
CLEC-20	DEP001340-DEP001361
WIRELESS-1	DEP000073-DEP000110
WIRELESS-2	DEP000478-DEP000506
WIRELESS-3	DEP000615-DEP000646
WIRELESS-4	DEP000774-DEP000818
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WIRELESS-7	DEP001291-DEP001339

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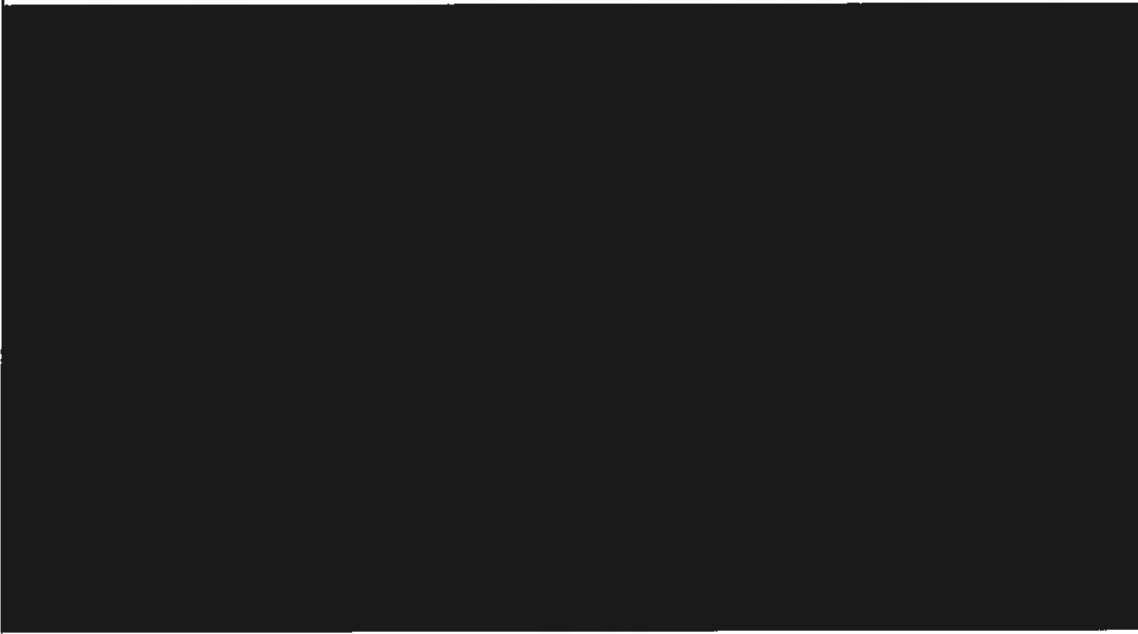

## Exhibit 2

## PUBLIC VERSION

Additional License Agreement Cites Substantiating  
AT&T's Competitive Disadvantages Under the JUA

1.	<p>AT&amp;T has less advantageous contractual access to Duke Progress's poles that can be denied or terminated at any time and for any reason. <i>See</i> Br. § I.A.1; Compl. Ex. 1 at ATT00094, ATT00104 (JUA, Arts. II, XVII(B)).</p> <p>In contrast, AT&amp;T's competitors have a permanent statutory right of access to Duke Progress's poles and, in the limited situation where access could be denied under federal law because there is insufficient pole capacity, [REDACTED] <i>See</i> Br. § I.A.1; 47 U.S.C. § 224(f).</p> <p>[REDACTED]</p>
2.	<p>AT&amp;T bears the burdens of pole ownership and maintenance under the JUA. <i>See</i> Br. § I.A.2; Compl. Ex. 1 at ATT00097, ATT00100 (JUA, Arts. VII(D) &amp; (E), VIII(A)).</p> <p>In contrast, AT&amp;T's competitors do not own poles under Duke Progress's license agreements or bear the associated pole ownership and maintenance costs. <i>See</i> Br. § I.A.2.</p> <p>[REDACTED]</p>

3.	<p>The JUA does not provide for timely make-ready when other attachers must modify (e.g., move or transfer) their facilities before AT&amp;T can attach its facilities to Duke Progress's poles. <i>See</i> Br. § I.A.3; Compl. Ex. 1 at ATT00091-110 (JUA).</p> <p>In contrast, AT&amp;T's competitors are guaranteed timely pole access and are protected by the Commission's one-touch make-ready option, make-ready deadlines, and self-help remedies. <i>See</i> Br. § I.A.3; 47 U.S.C. § 224(f); 47 C.F.R. § 1.1411.</p>
4.	<p>AT&amp;T's typical location at the bottom of the communications space subjects AT&amp;T to higher transfer and repair costs, which it has tried to eliminate by encouraging the placement of facilities lower on the pole. <i>See</i> Br. § I.A.4.</p> <p>In contrast, AT&amp;T's competitors may attach their facilities above AT&amp;T's facilities, where they may complete transfer work earlier and where the facilities are less susceptible to damage. <i>See</i> Br. § I.A.4.</p>
5.	<p>The JUA "continue[s the parties' prior] Joint Use of poles," which Duke Progress considers sufficient to perpetuate space allocations under the parties' prior agreement. But the parties' prior superseded agreement allocated excess space to AT&amp;T that AT&amp;T does not need, want, or use, and that is not "reserved" for AT&amp;T, as the Commission found such space reservations unlawful in 1996. <i>See</i> Br. § I.A.5; Compl. Ex. 1 at</p>

	<p>ATT00093 (JUA, Whereas Clauses); Answer Ex. 2 at DEP000140 (superseded 1977 JUA, Art. I(A)(2)).</p> <p>In contrast, AT&amp;T's competitors are provided as much space as they require, including space required to accommodate multiple attachments, and are charged <i>only</i> for the space they actually occupy. <i>See</i> Br. § I.A.5; 47 C.F.R. § 1.1406(d)(2).</p> 
6.	<p>The JUA requires AT&amp;T to extend to Duke Progress each and every term and condition—whether related to pole installation, permitting, bonding, liability, or assignment of rights—for use of AT&amp;T's poles that Duke Progress provides AT&amp;T. <i>See</i> Br. § I.A.6; <i>see also</i> Compl. Ex. 1 at ATT00091-110 (JUA).</p> <p>In contrast, AT&amp;T's competitors are not required to extend these “reciprocal” terms and conditions to Duke Progress because they do not own poles under Duke Progress's license agreements. <i>See</i> Br. § I.A.6.</p> 

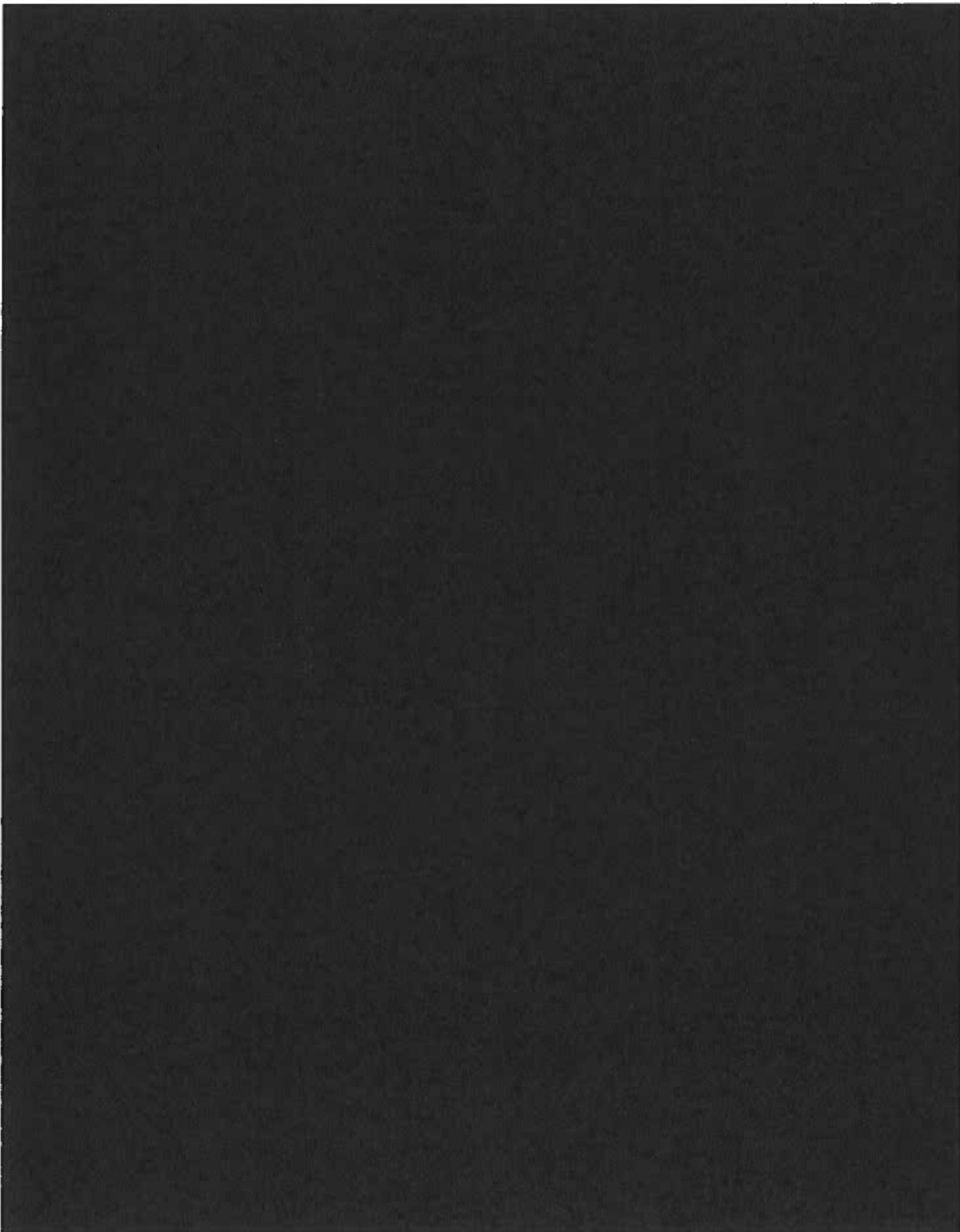
7.	<p>The JUA's evergreen provision locks in the JUA's exceptionally high rental rates even after the JUA is terminated and requires costly litigation for AT&amp;T to obtain rate relief. <i>See Br. § I.A.7; see also Compl. Ex. 1 at ATT00104 (JUA, Art. XVII(B)).</i></p> <p>In contrast, AT&amp;T's competitors are guaranteed much lower new telecom rates by statute, regulation, and license agreement, which reduces disputes and costly litigation for them. <i>See Br. § I.A.7.</i></p>

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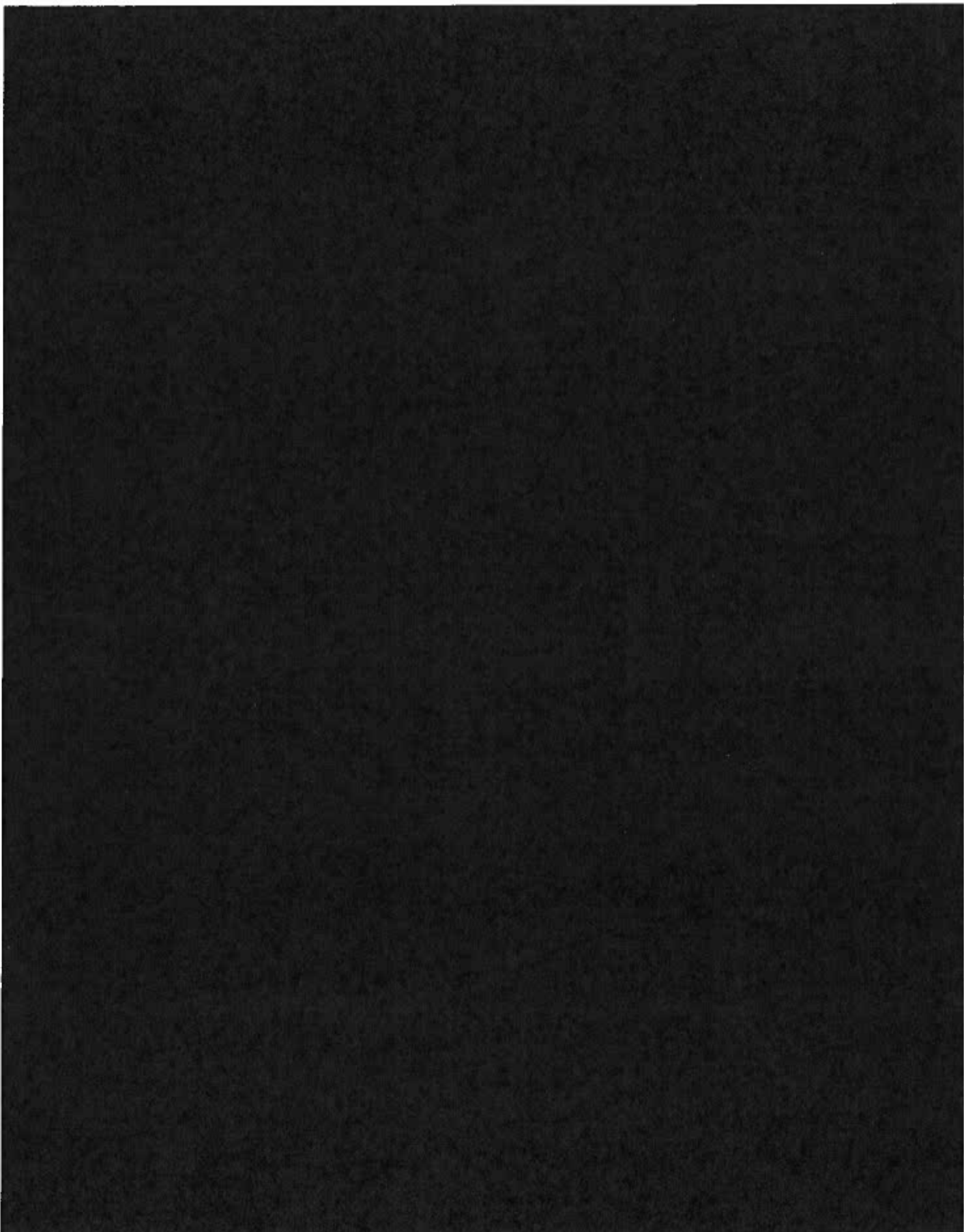
## **Exhibit 3**



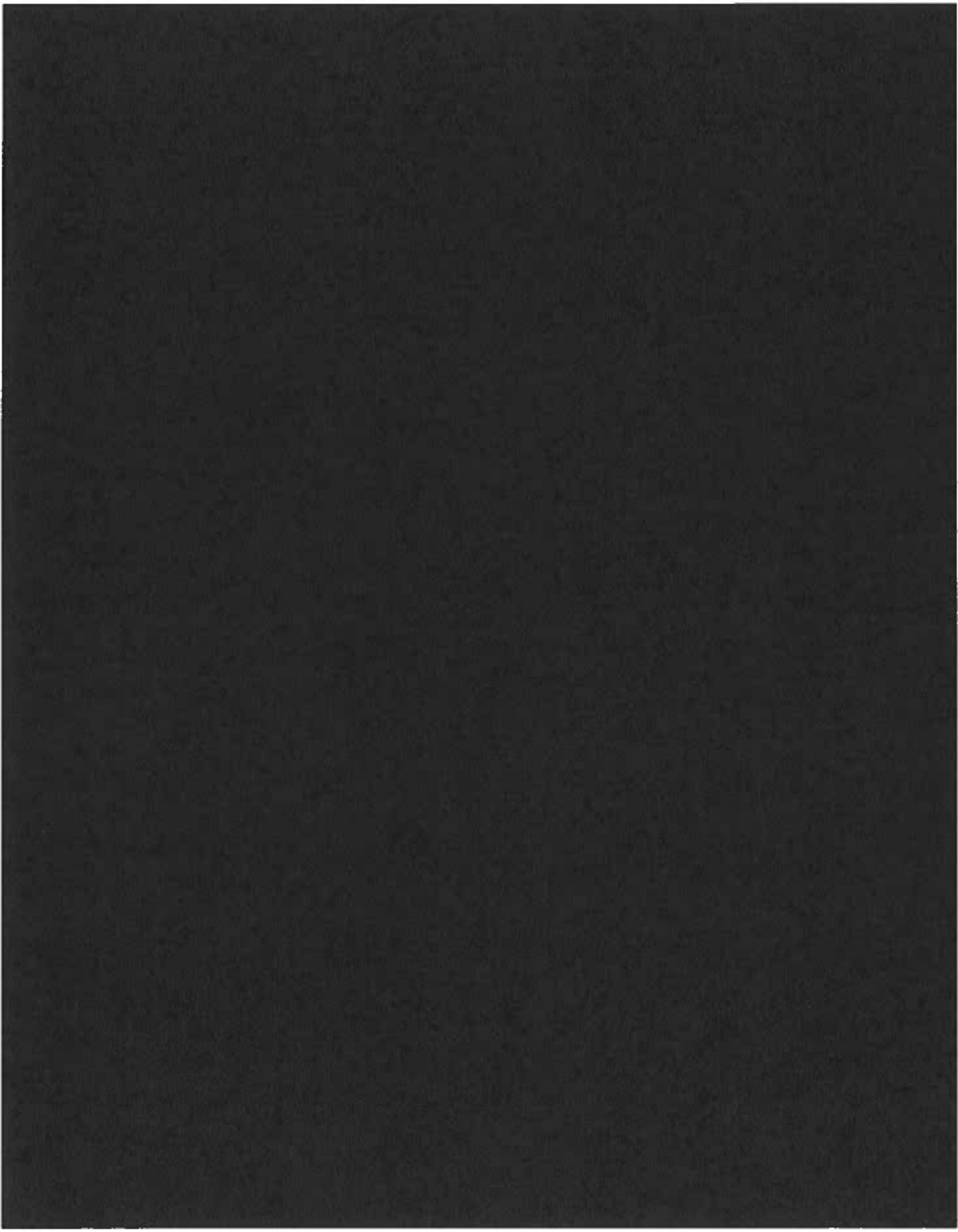
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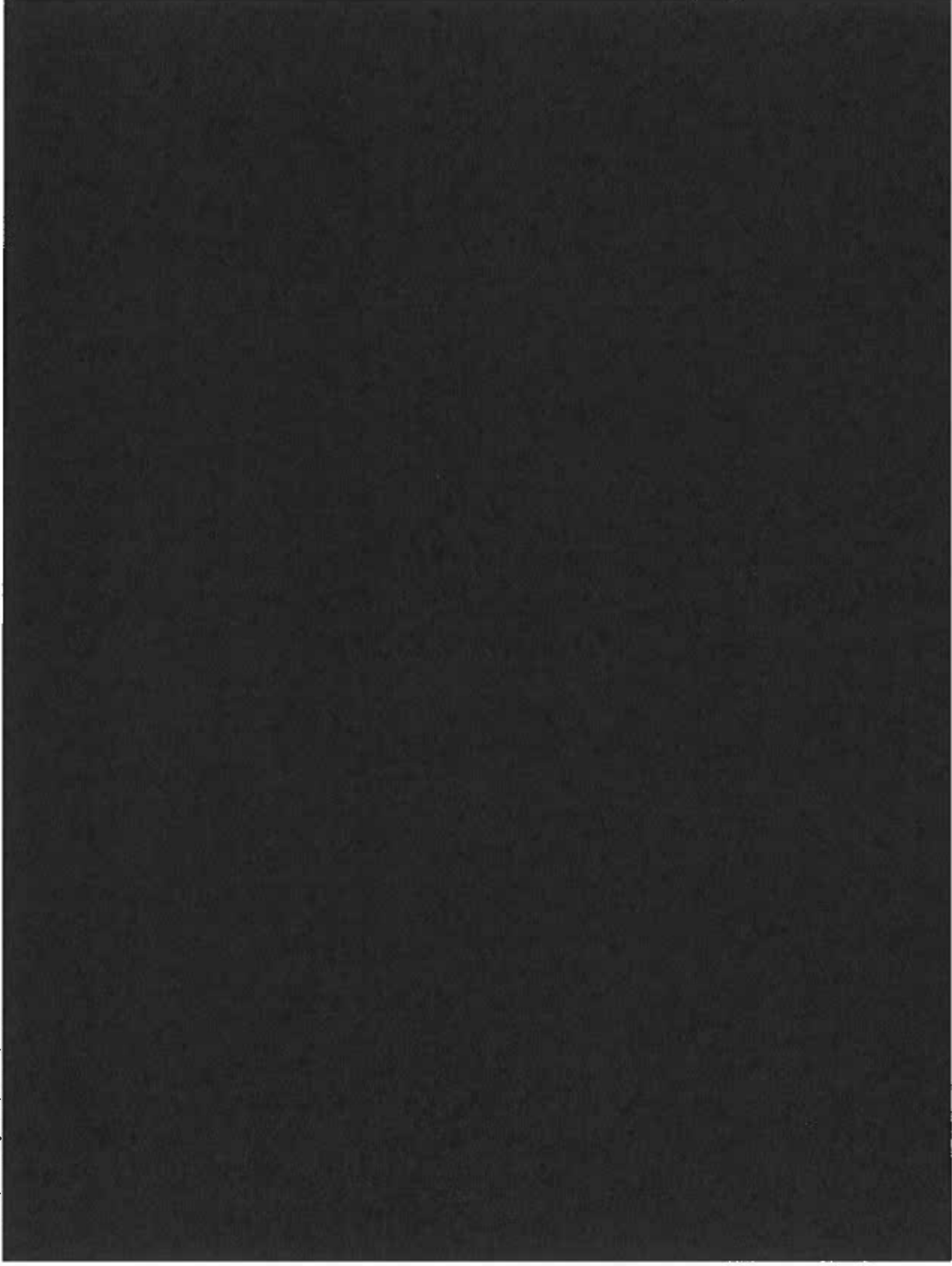
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## **Exhibit 4**

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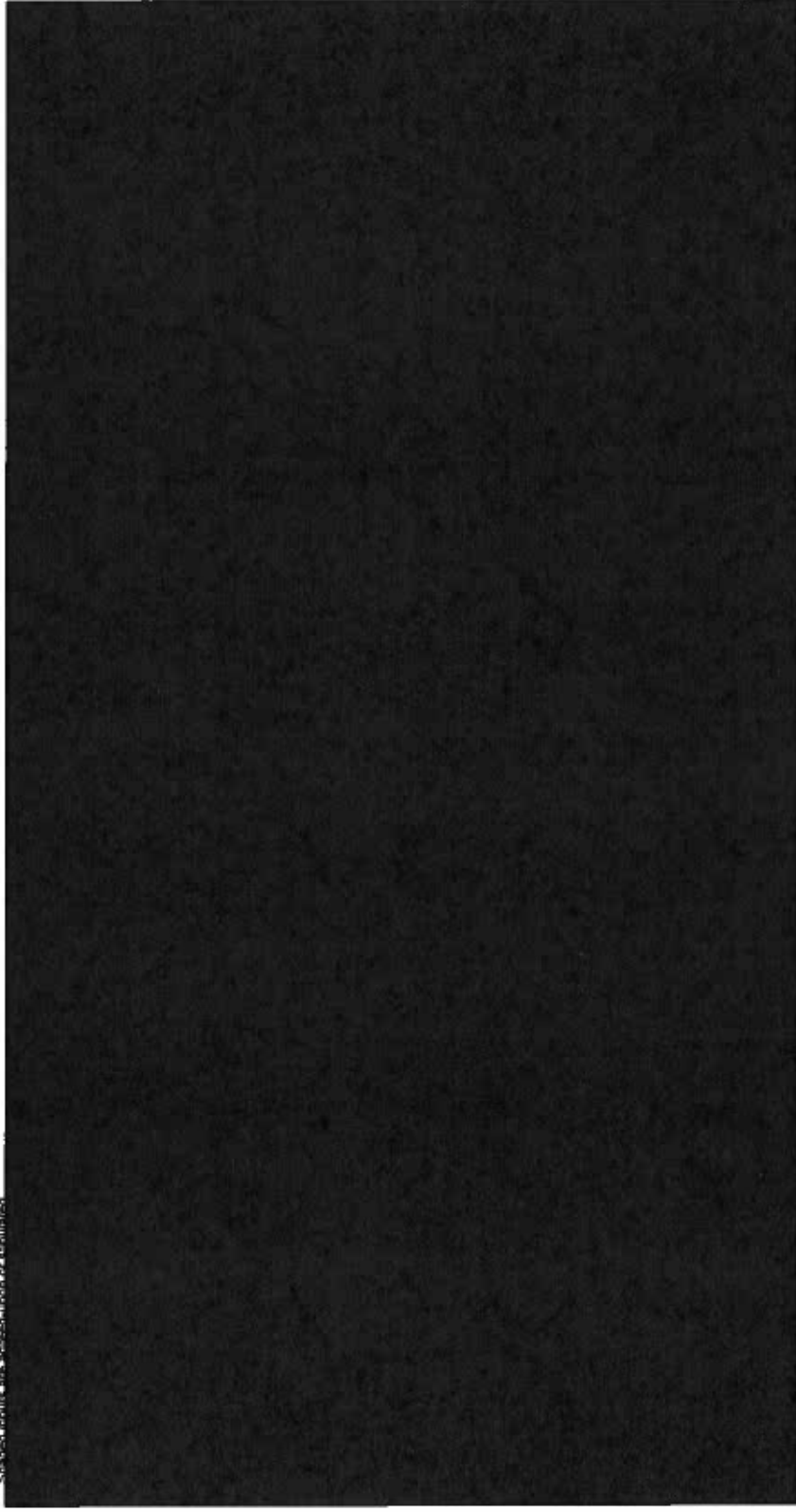
**Per-Pole Rate Calculations for AT&T North Carolina's and AT&T South Carolina's Use of Duke Energy Progress's Poles  
Using Agreed-Upon, Stipulated\*, and Disputed Inputs (Page 1 of 2)**

\*AT&T does not agree that the stipulated inputs are correct, but stipulates to their use for purposes of this case to reduce areas of dispute because of their minimal impact on the resulting rate. Shaded inputs are agreed-upon or stipulated



**Per-Pole Rate Calculations for AT&T North Carolina's and AT&T South Carolina's Use of Duke Energy Progress's Poles  
Using Agreed-Upon, Stipulated\*, and Disputed Inputs (Page 2 of 2)**

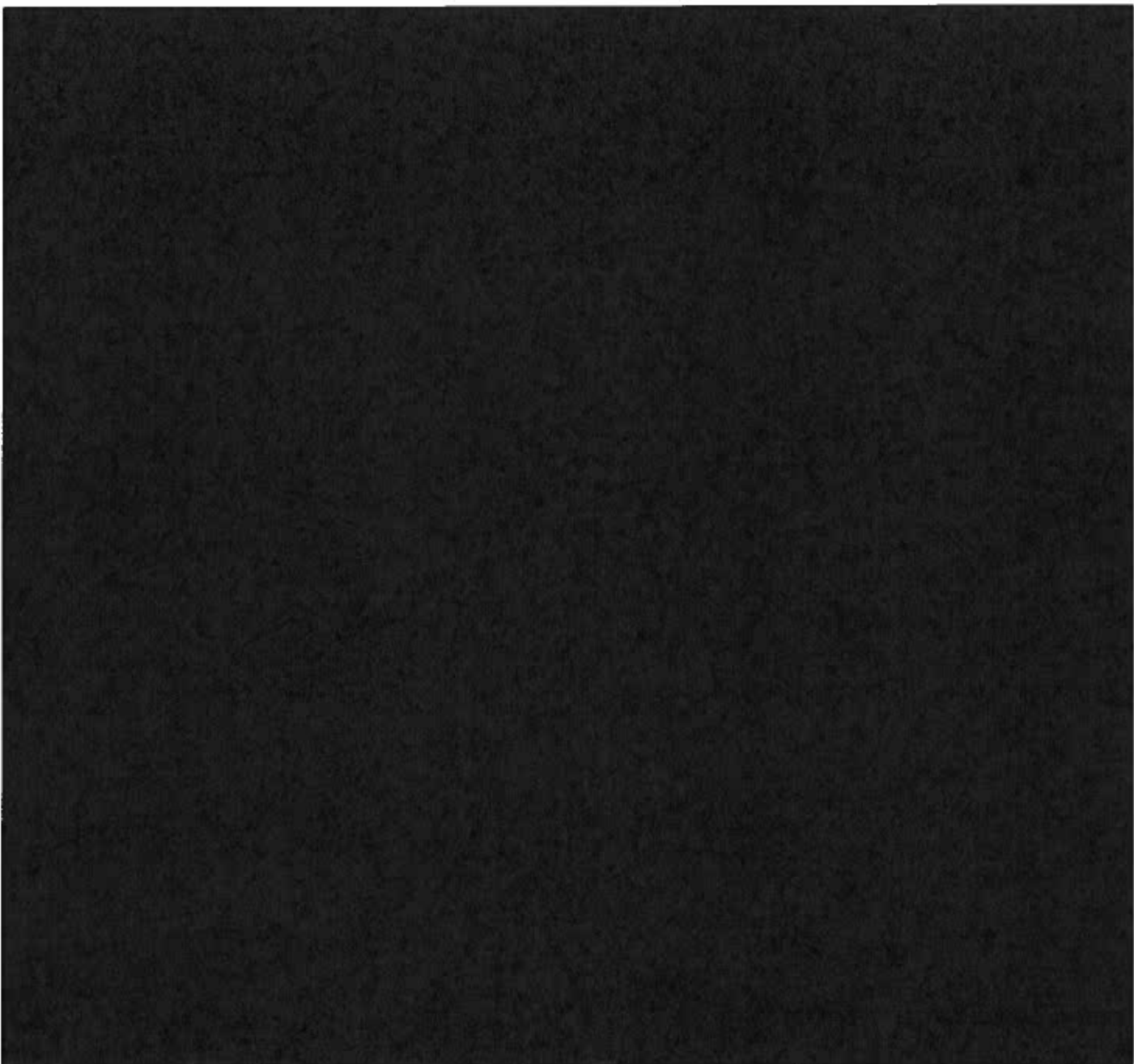
\*AT&T does not agree that the stipulated inputs are correct, but stipulates to their use for purposes of this case to reduce areas of dispute because of their minimal impact on the resulting rate.



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## **Exhibit 5**

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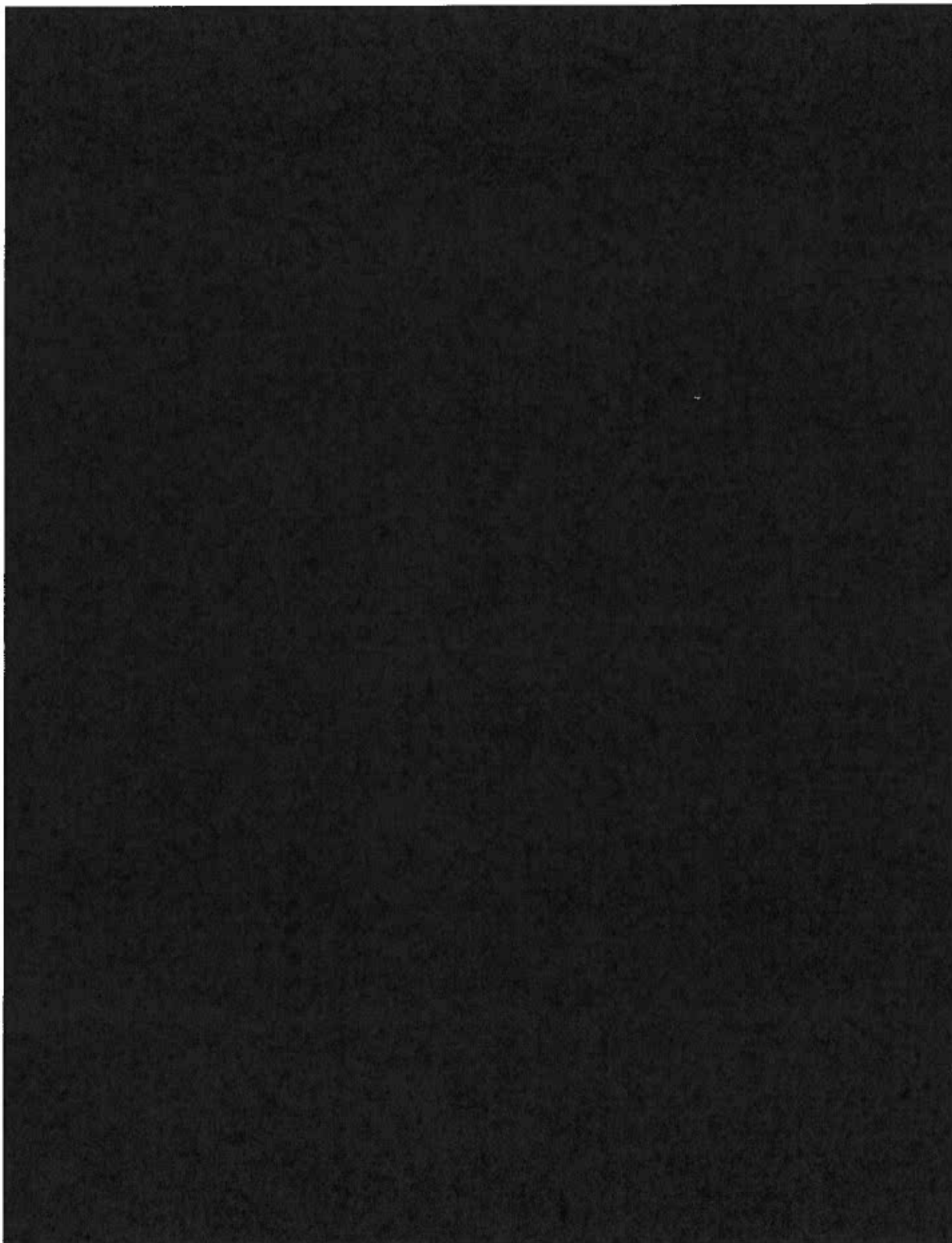




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## **Exhibit 6**

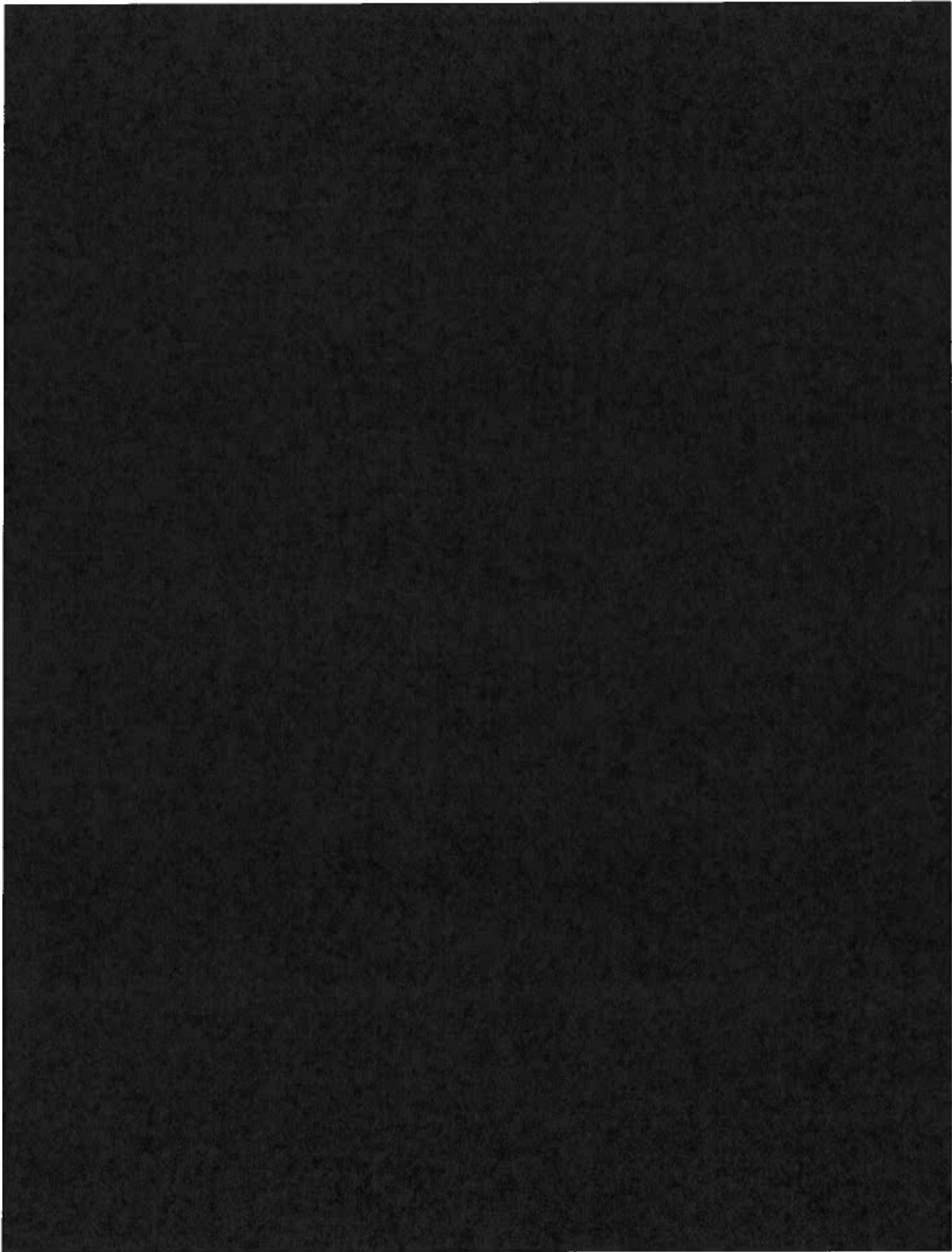
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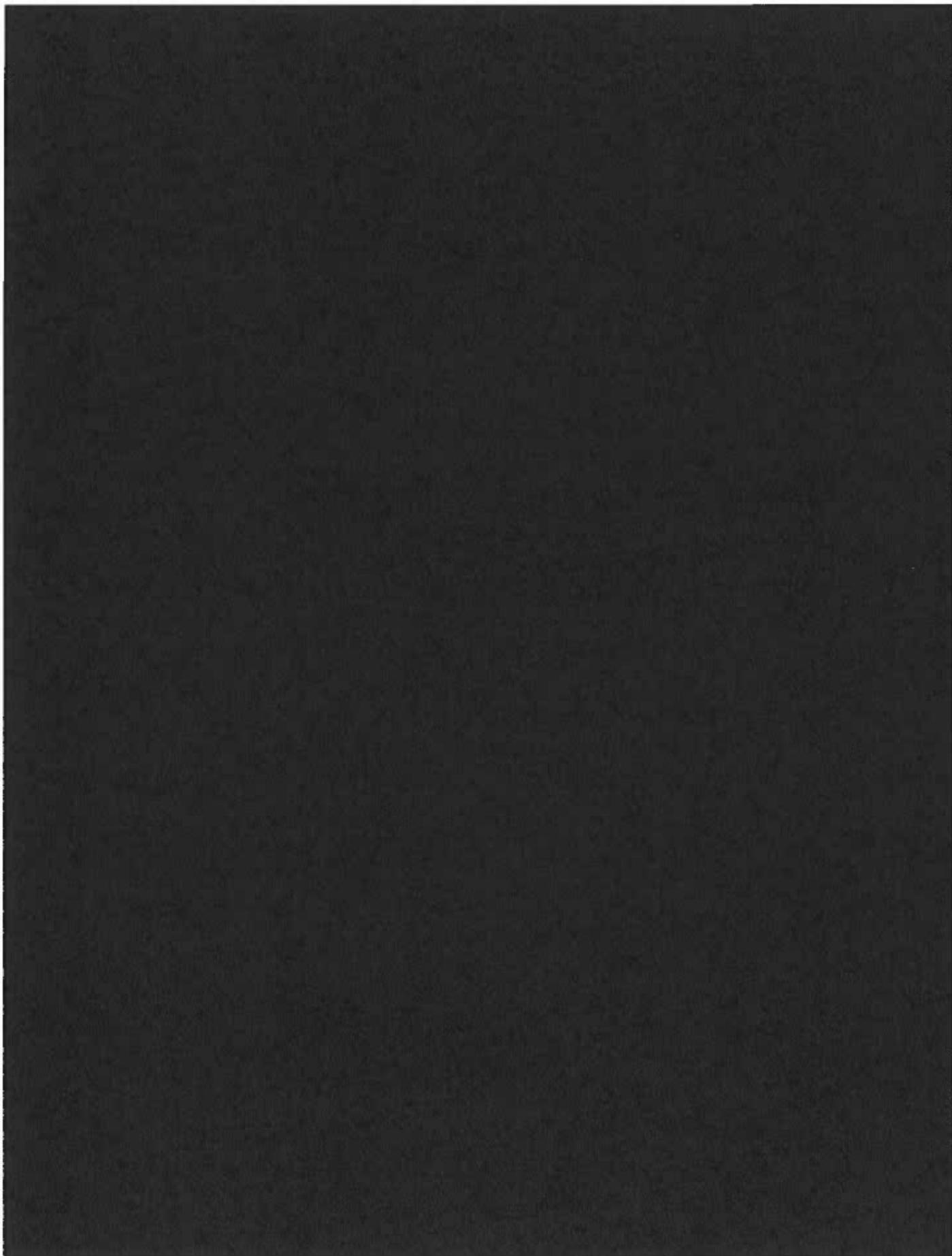
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## **Exhibit 7**

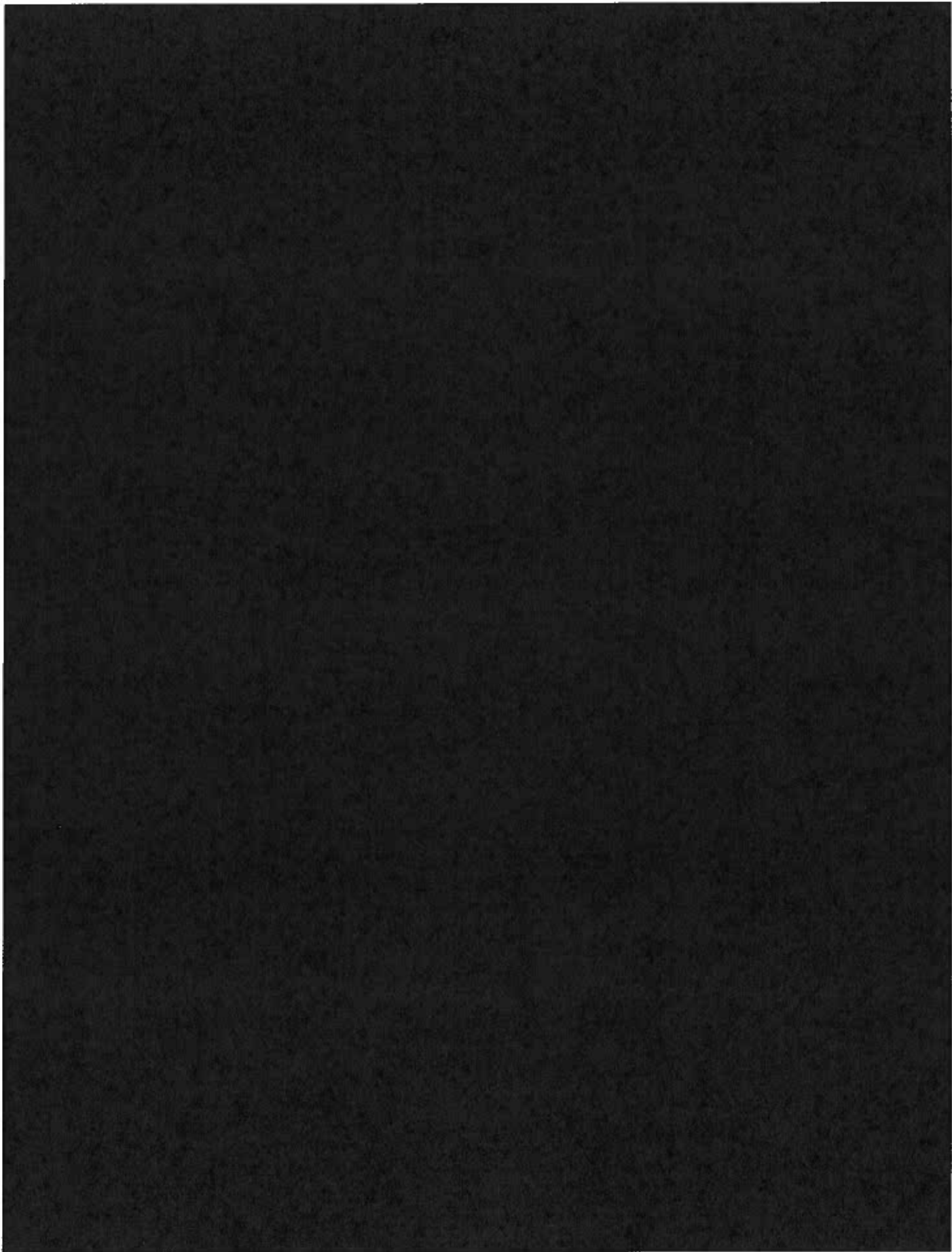
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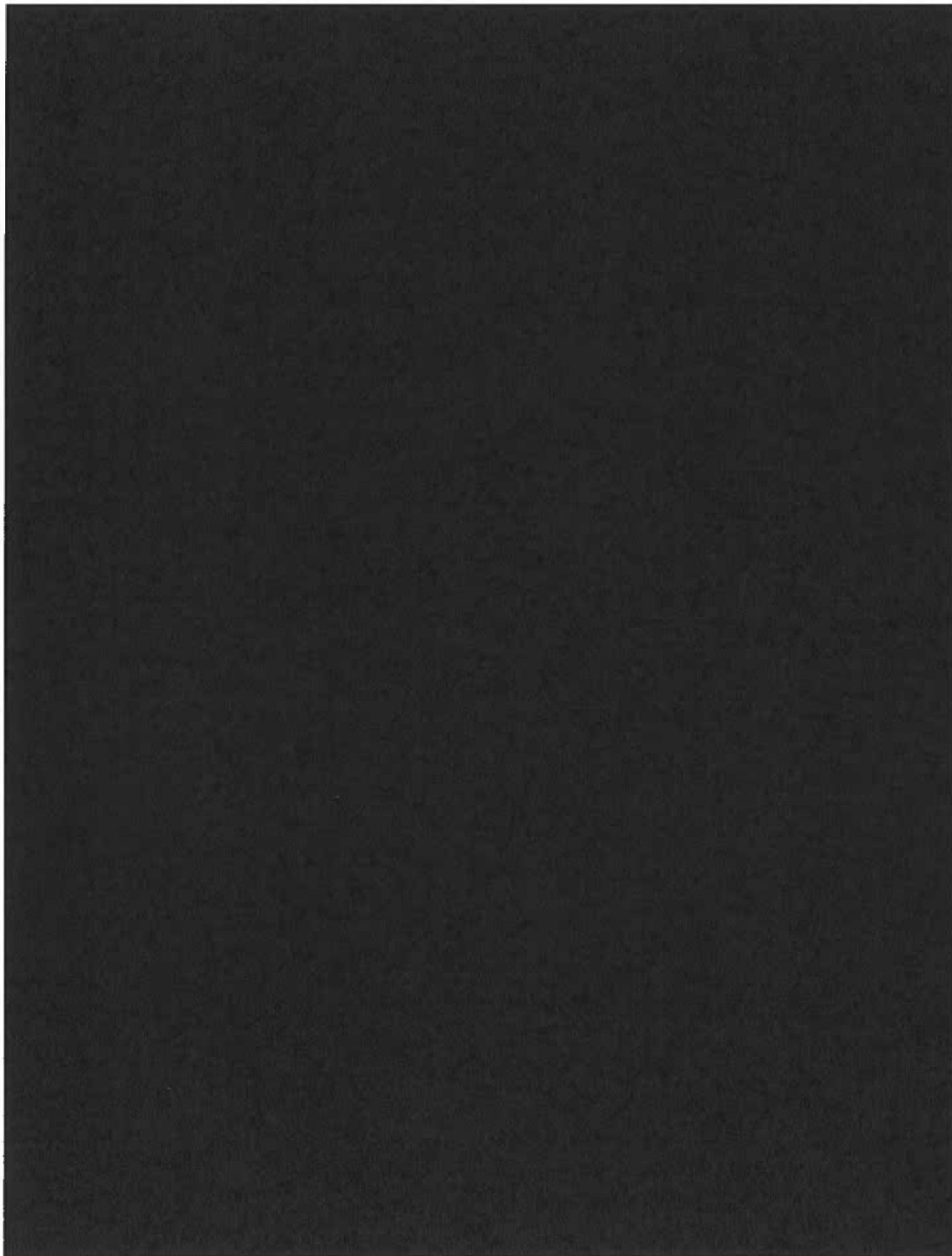
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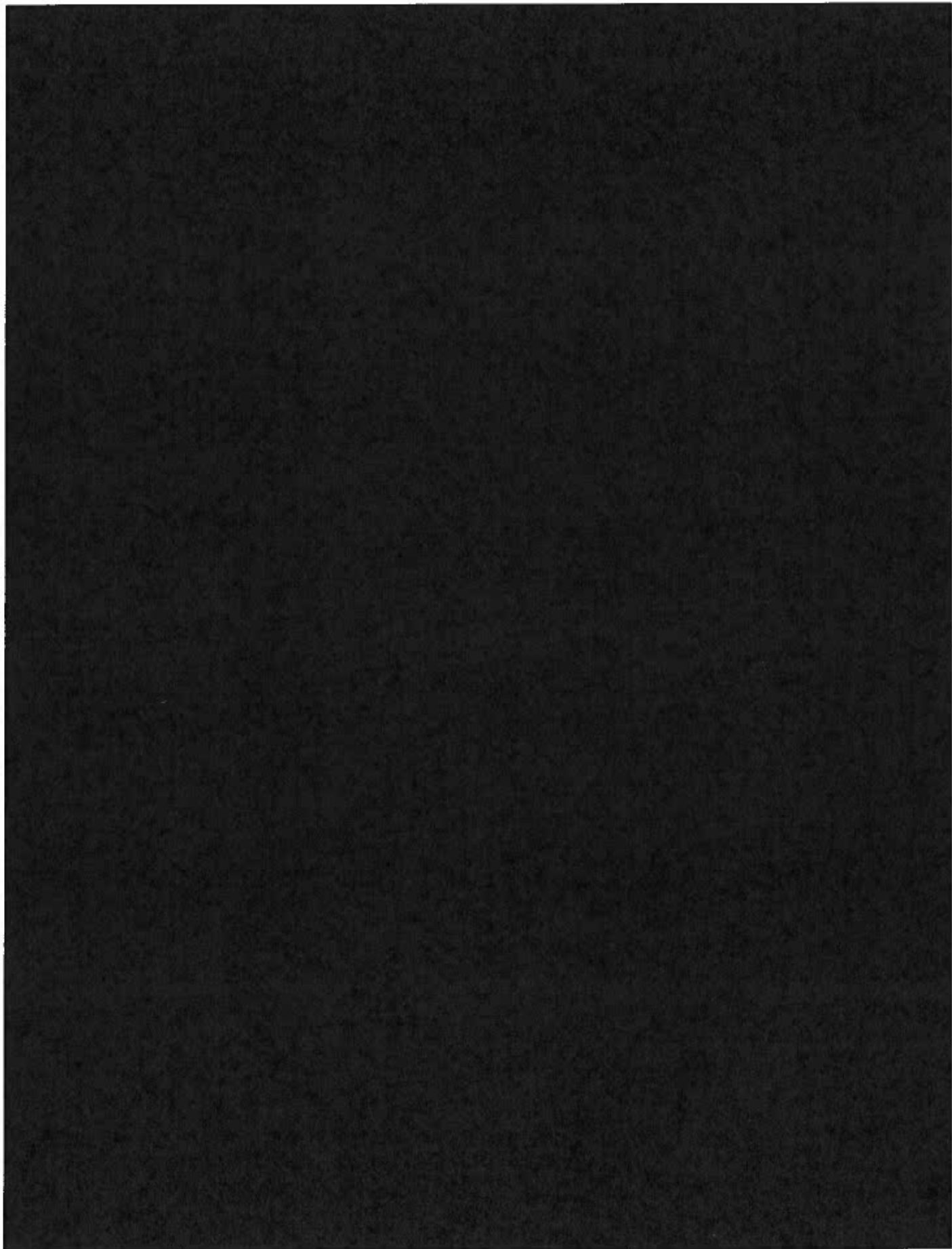
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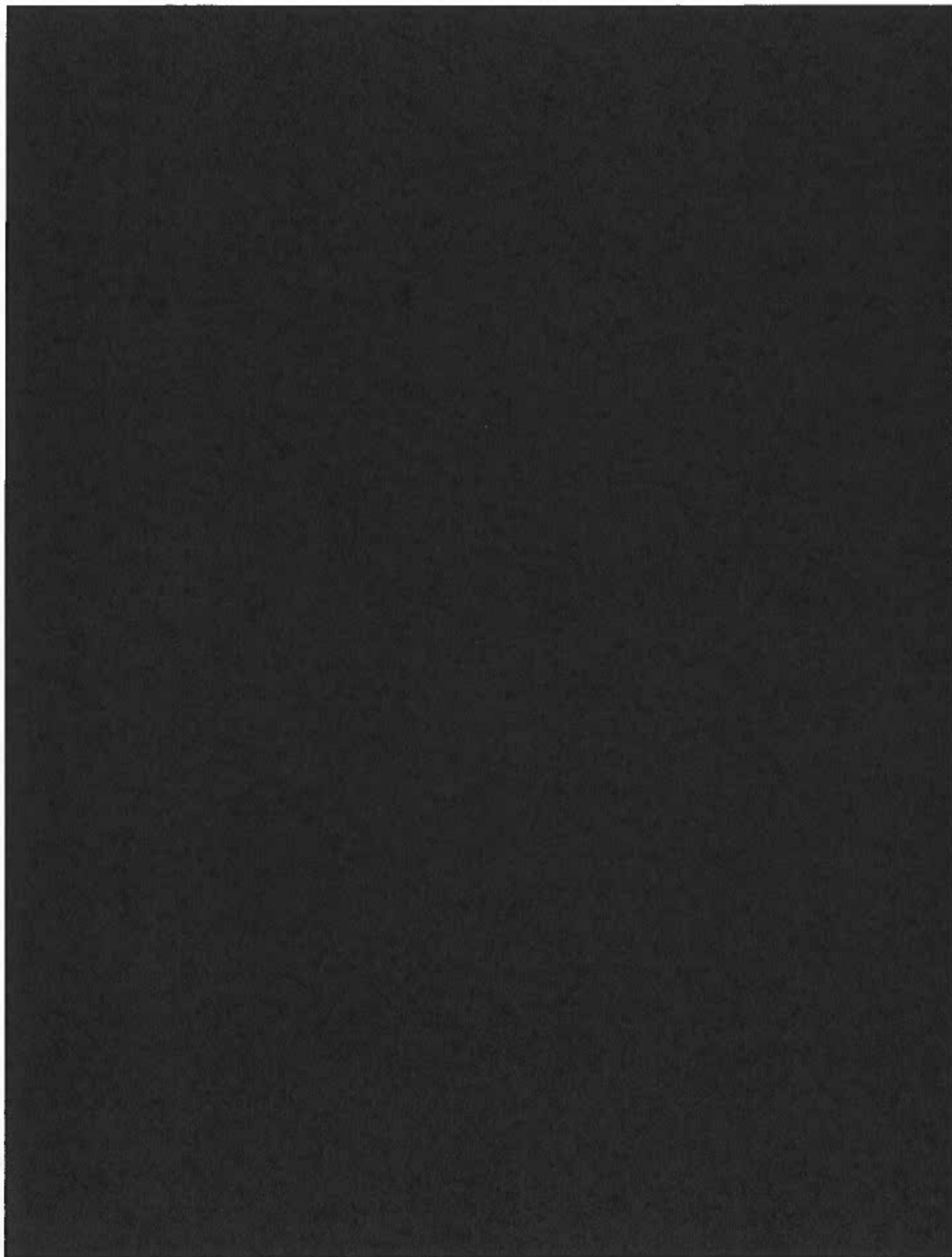


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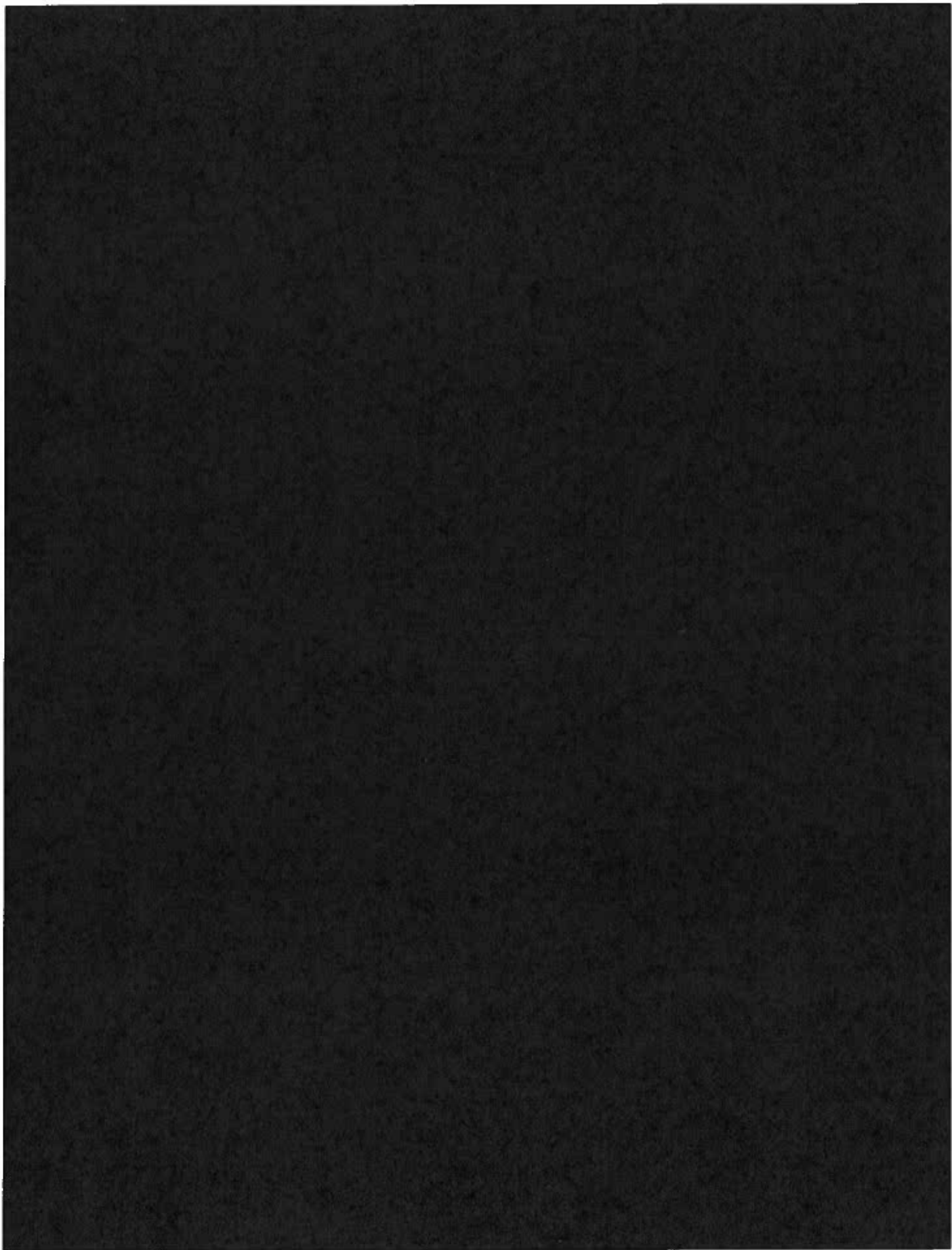




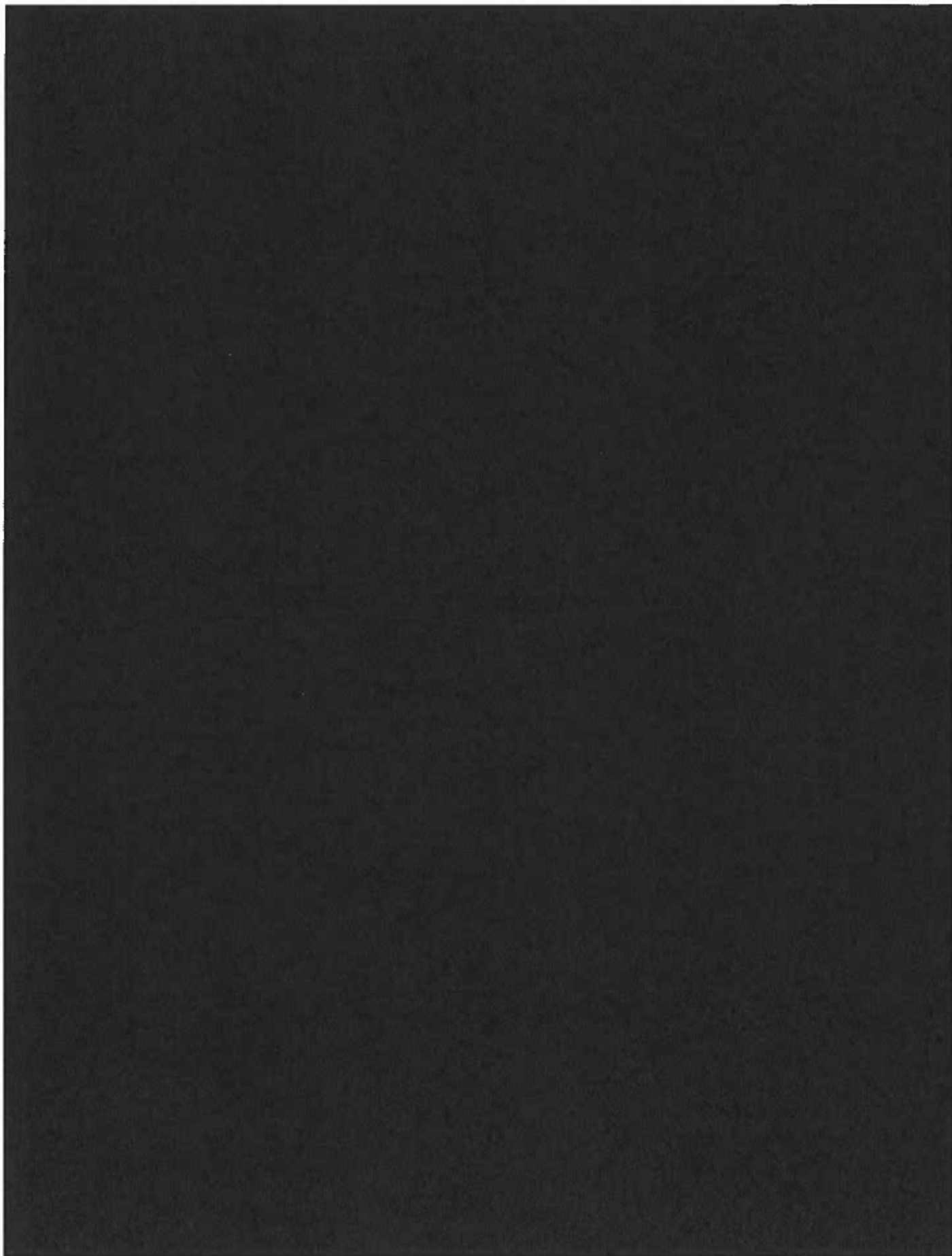
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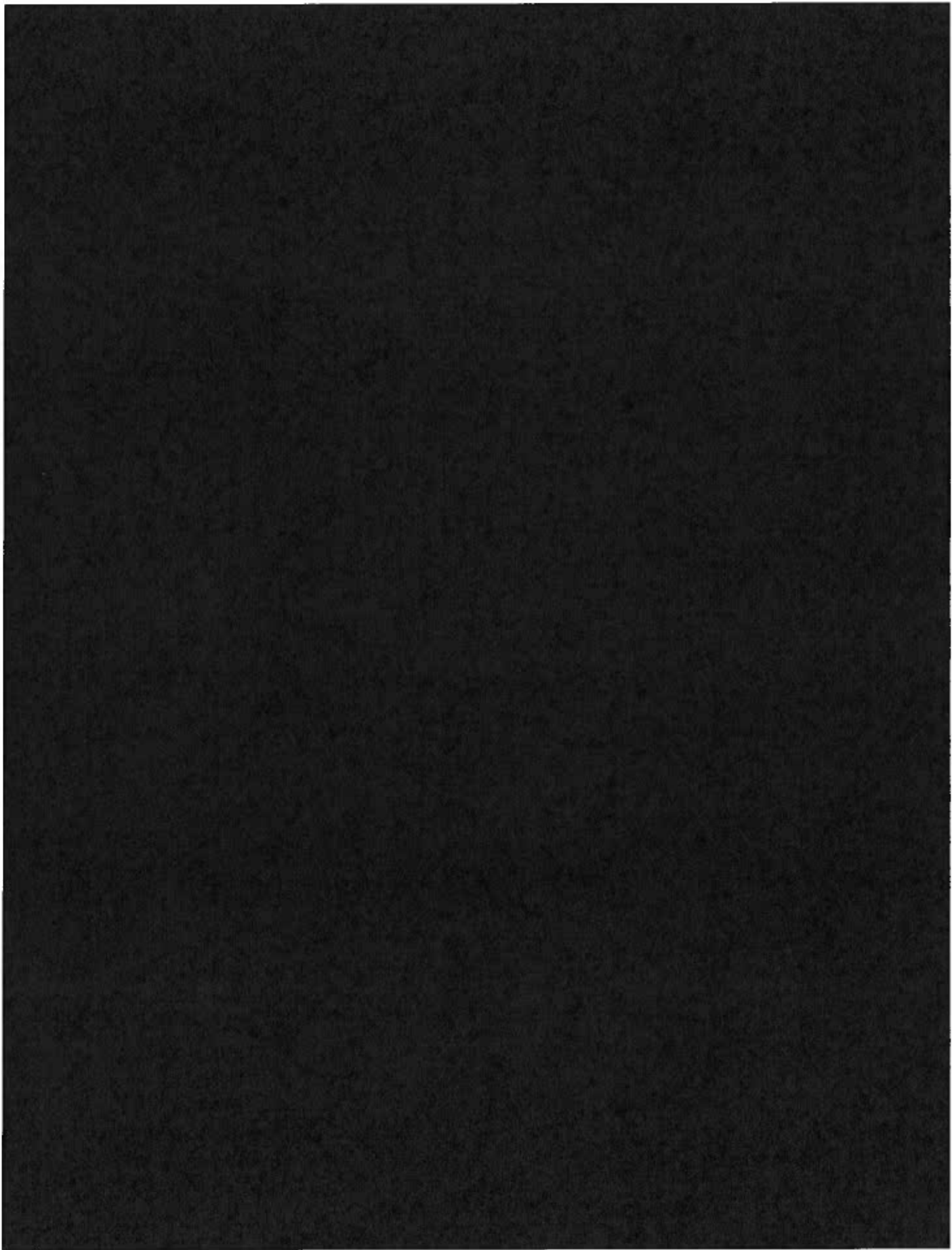
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## **Exhibit 8**

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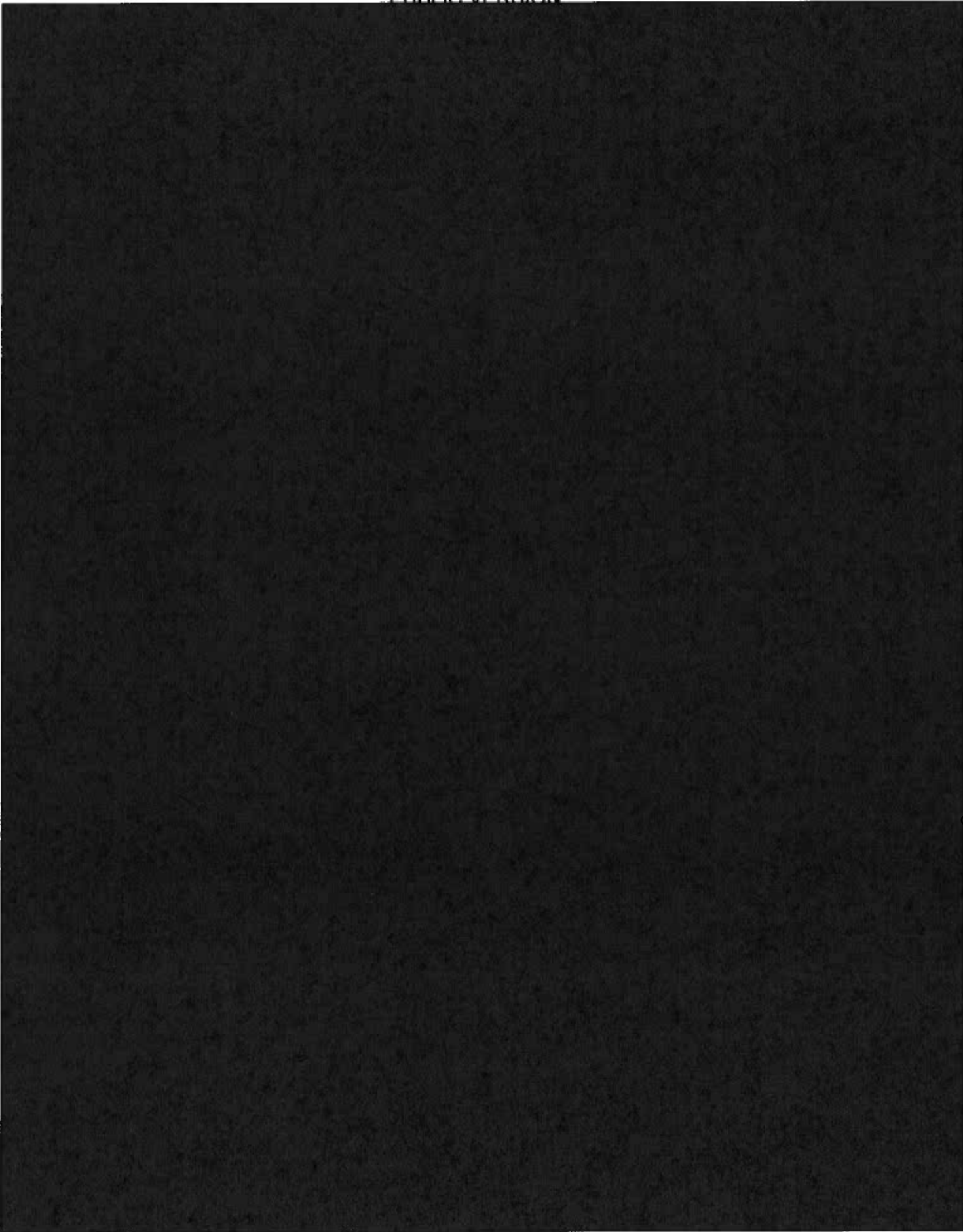
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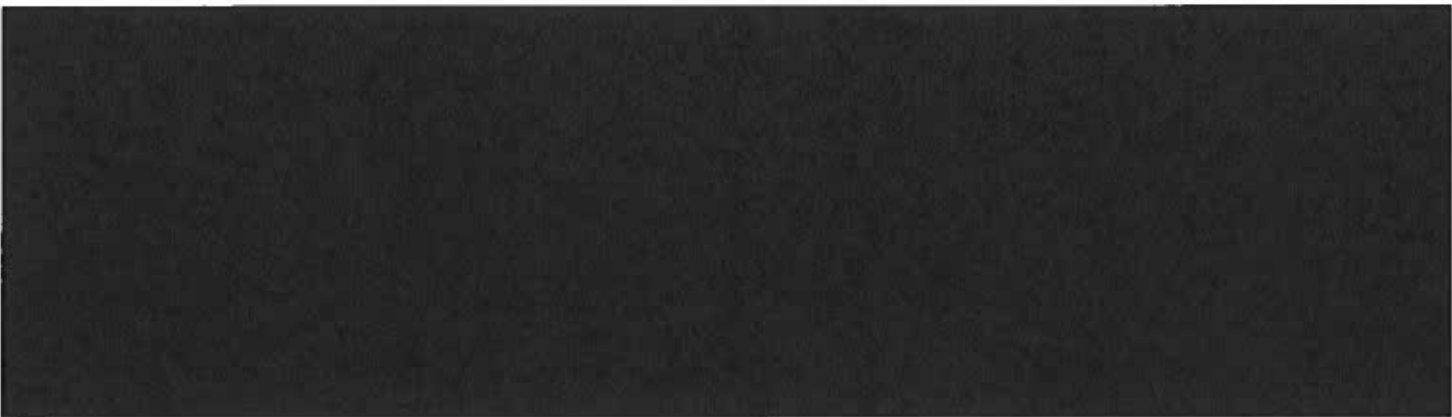
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## **Exhibit 9**

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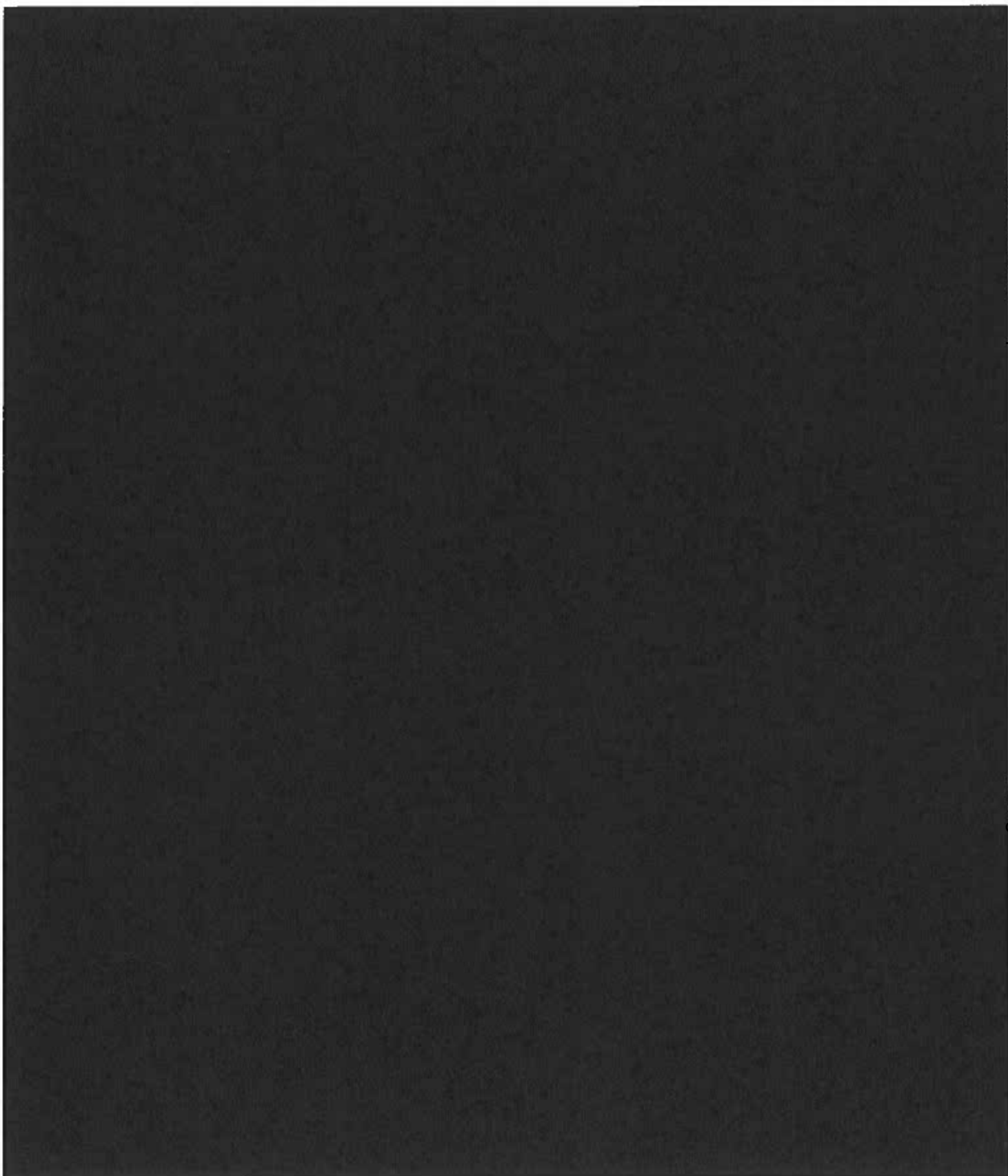


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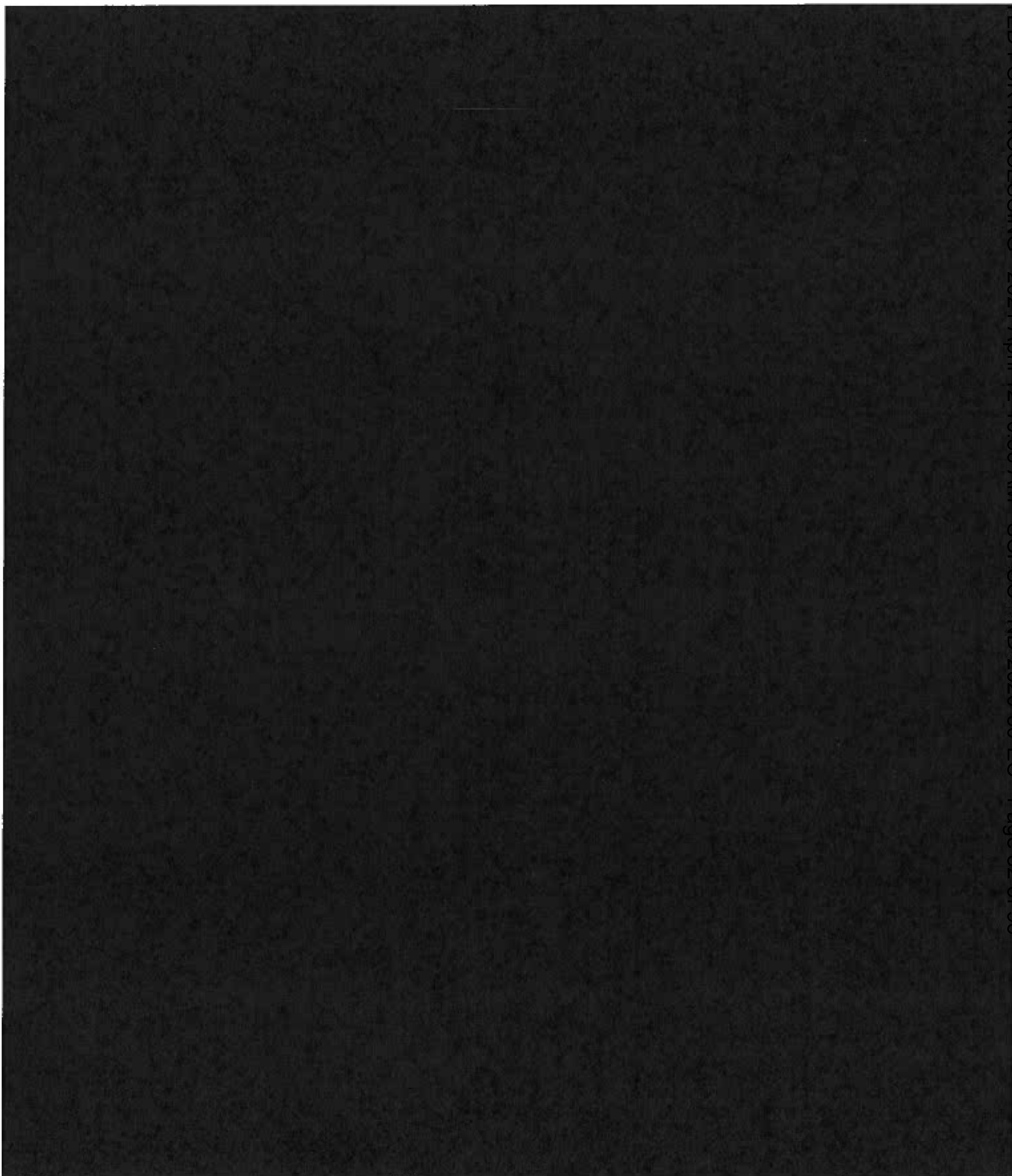
## **Exhibit 10**



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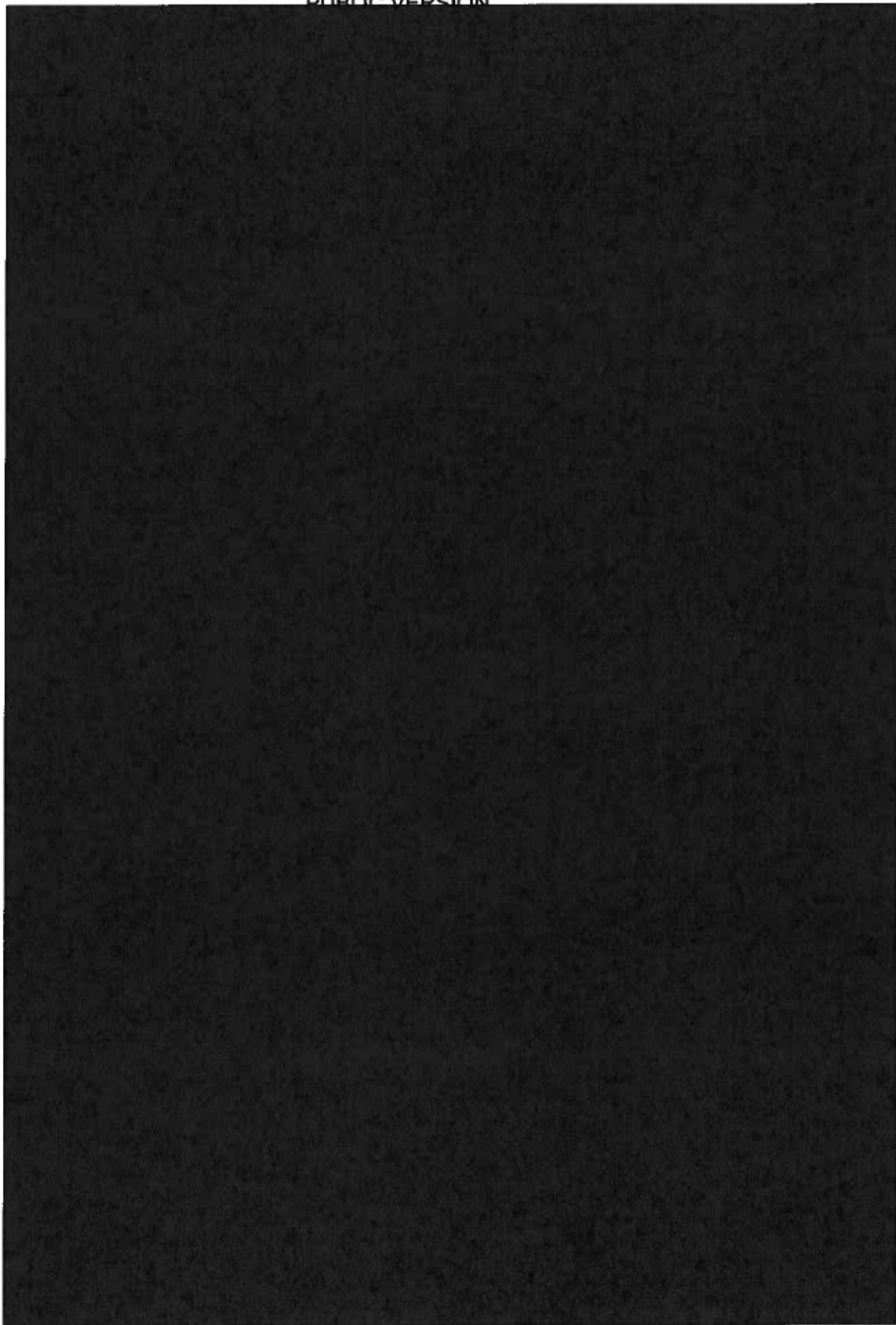
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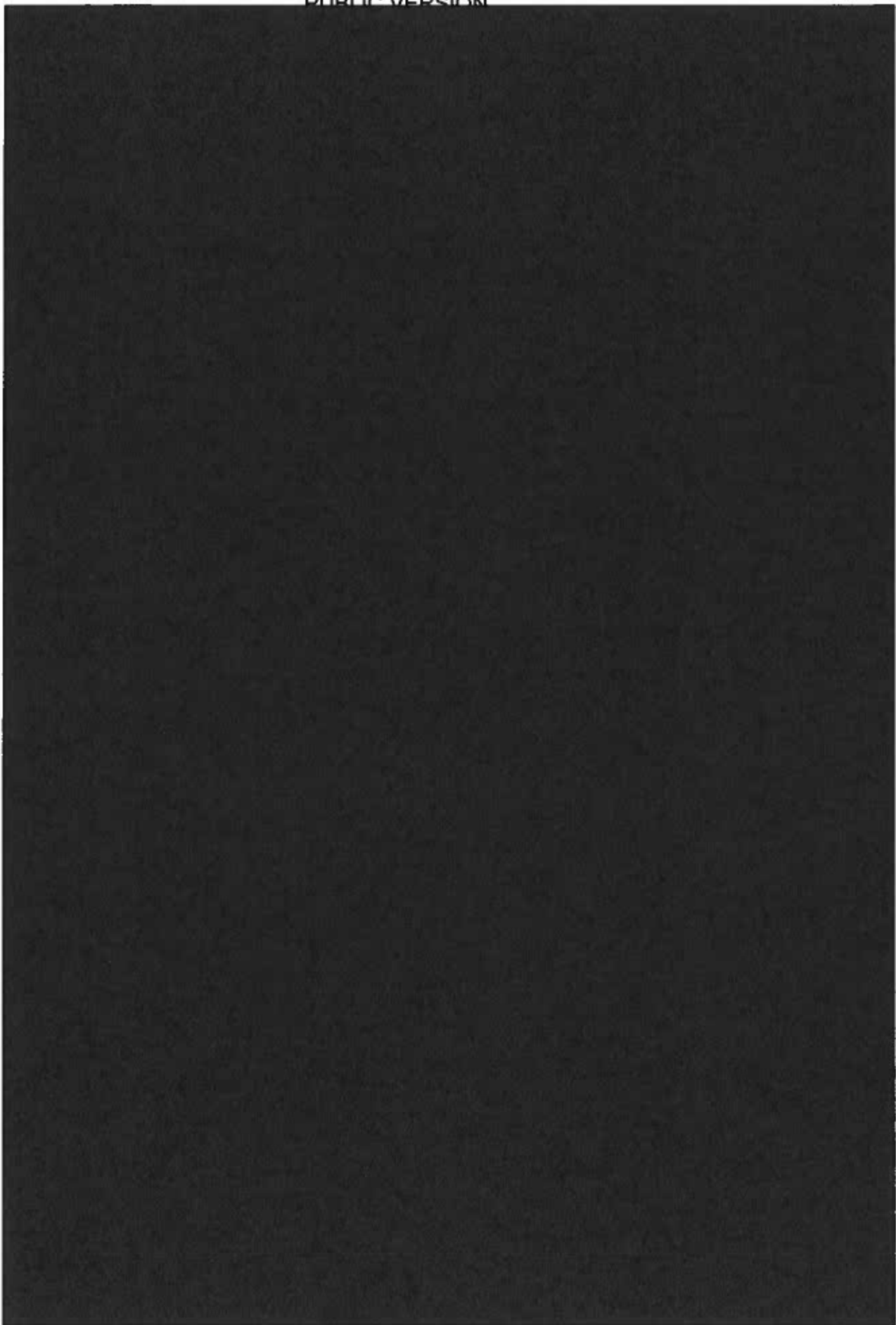
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## **Exhibit 11**

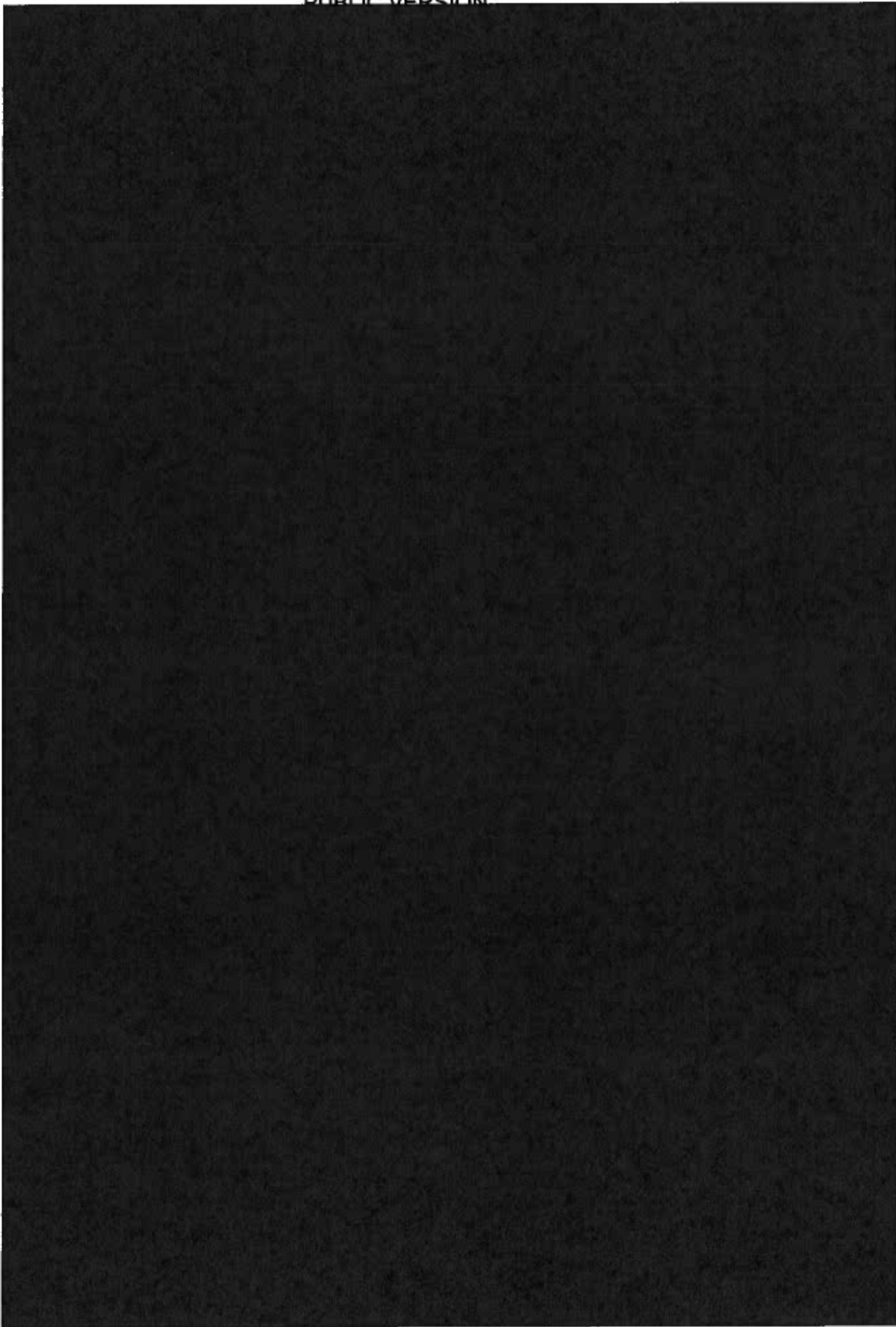
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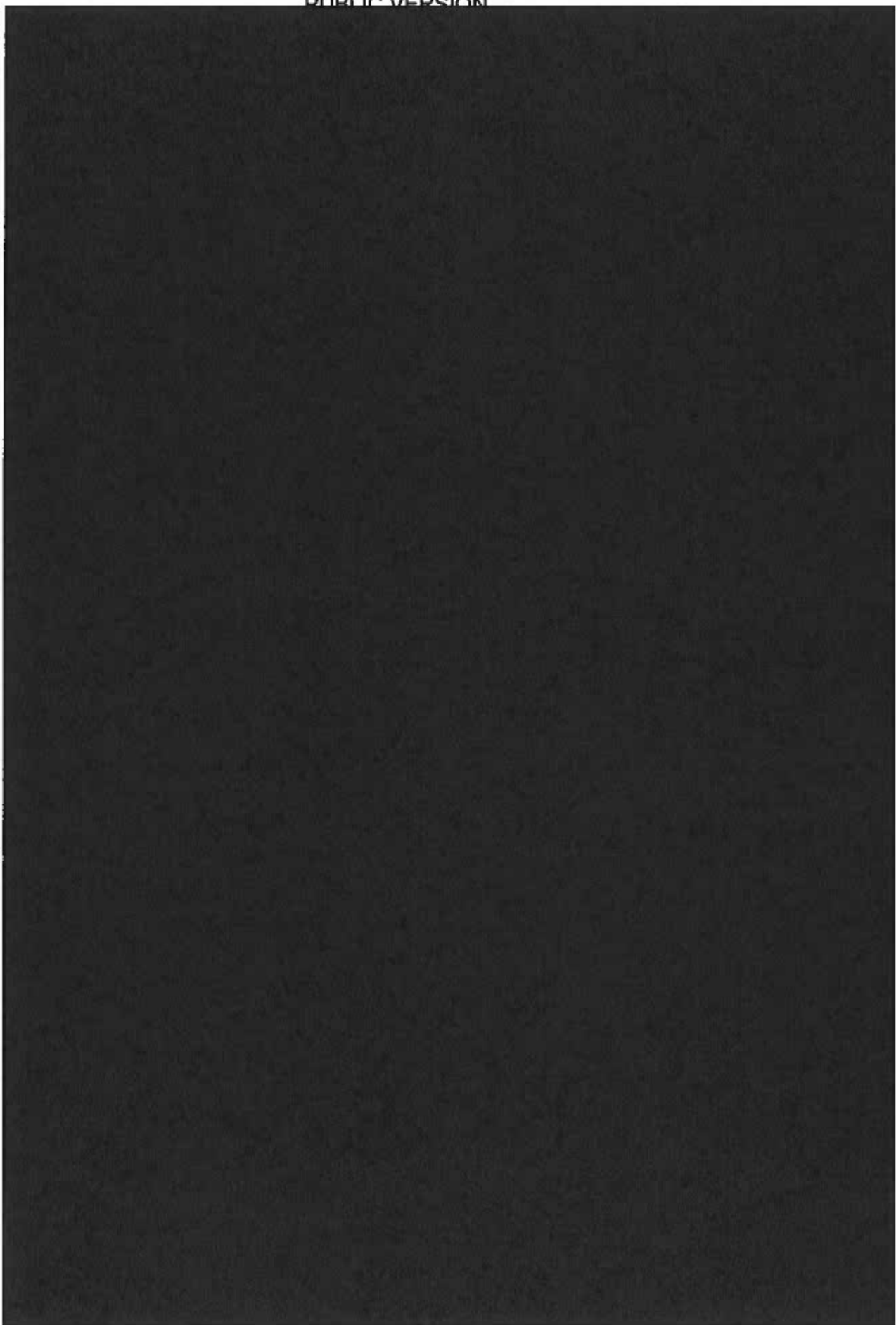
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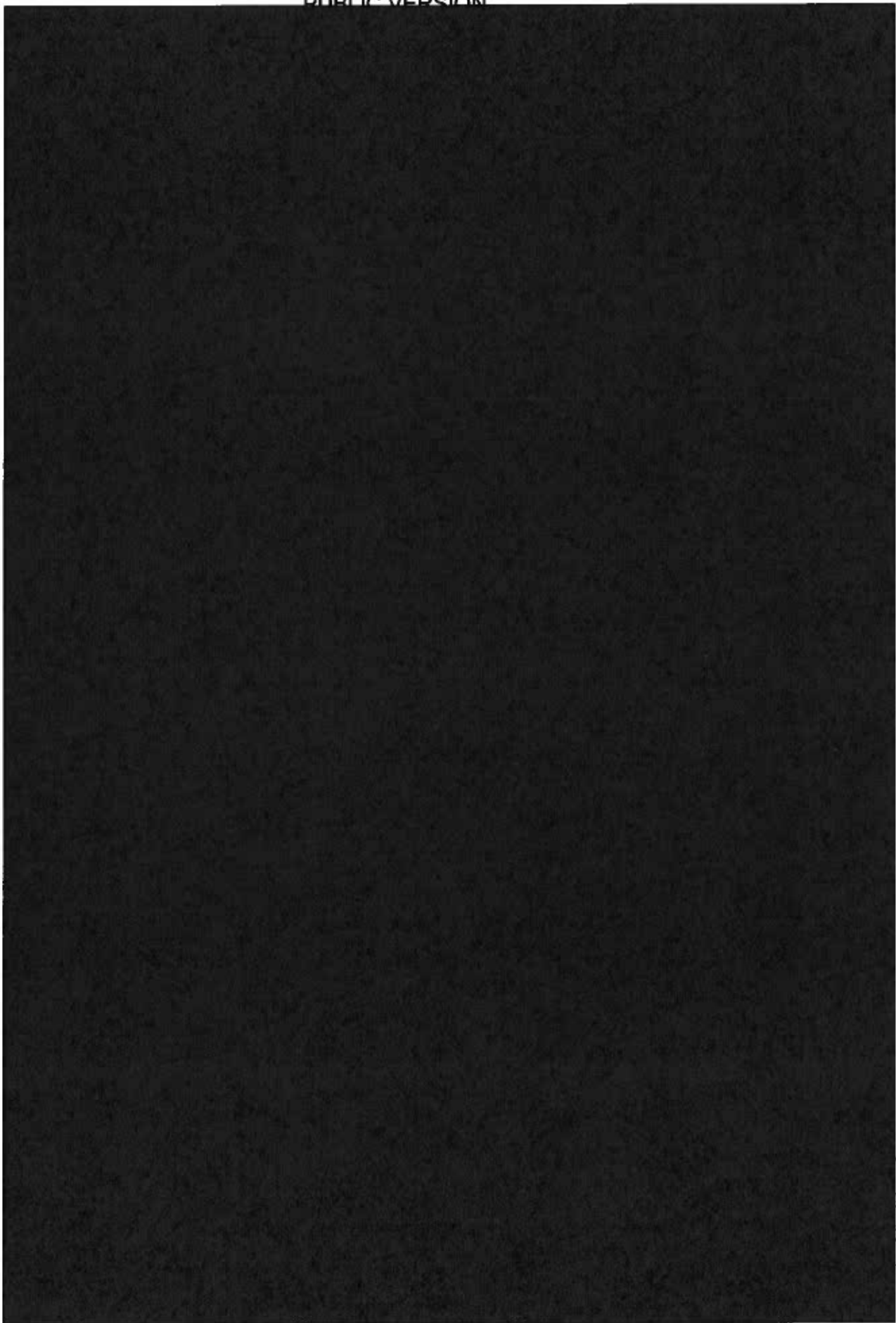
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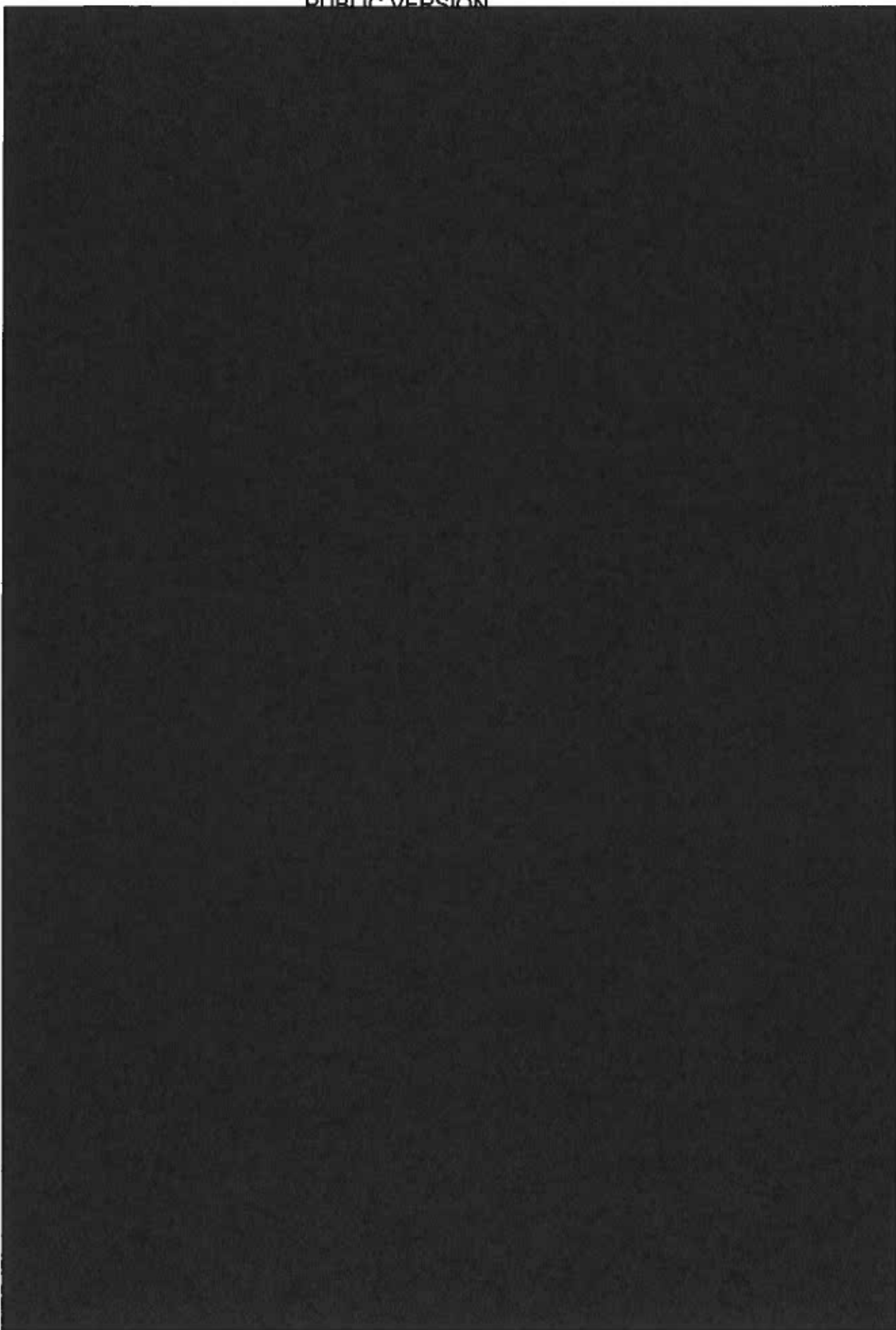


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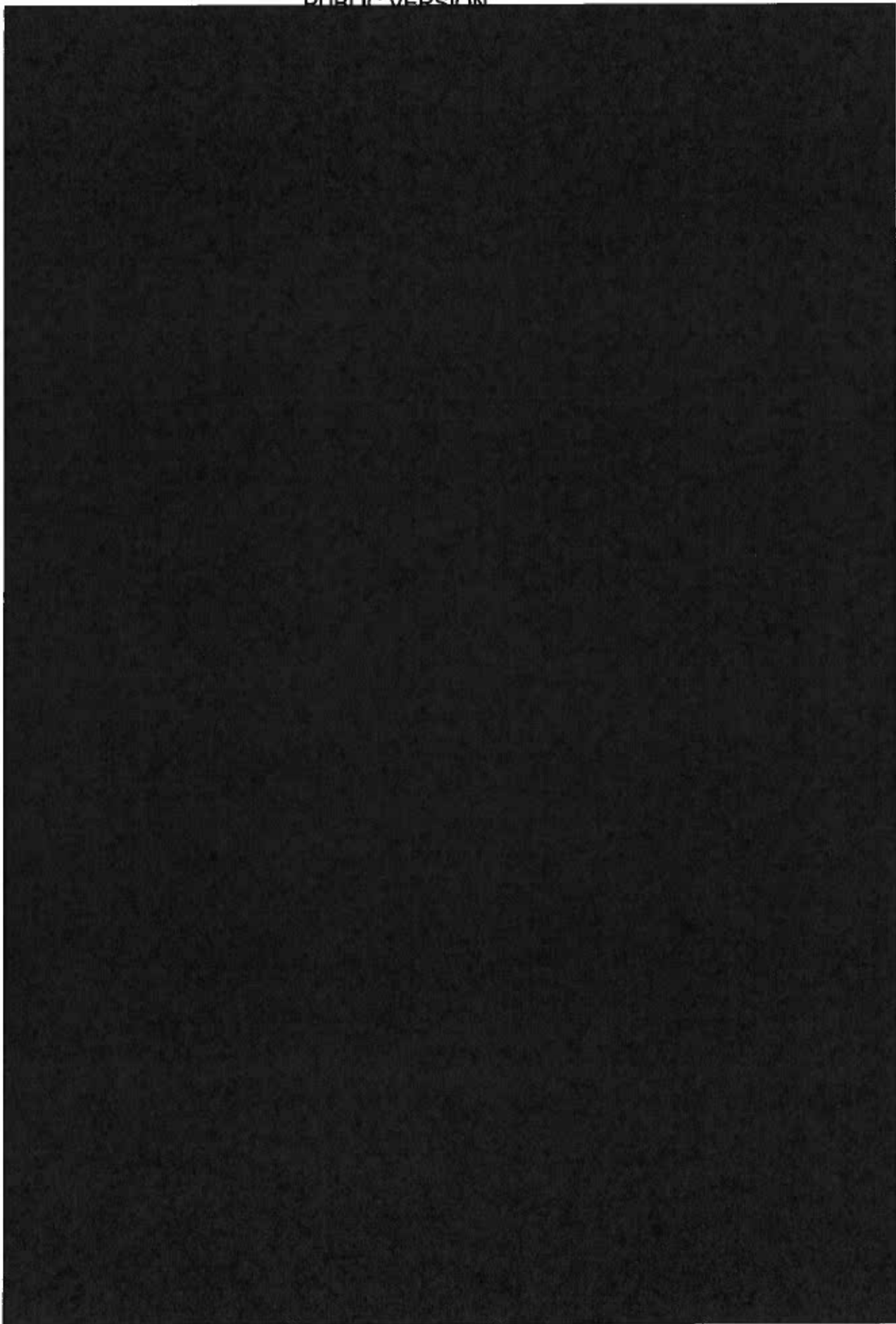




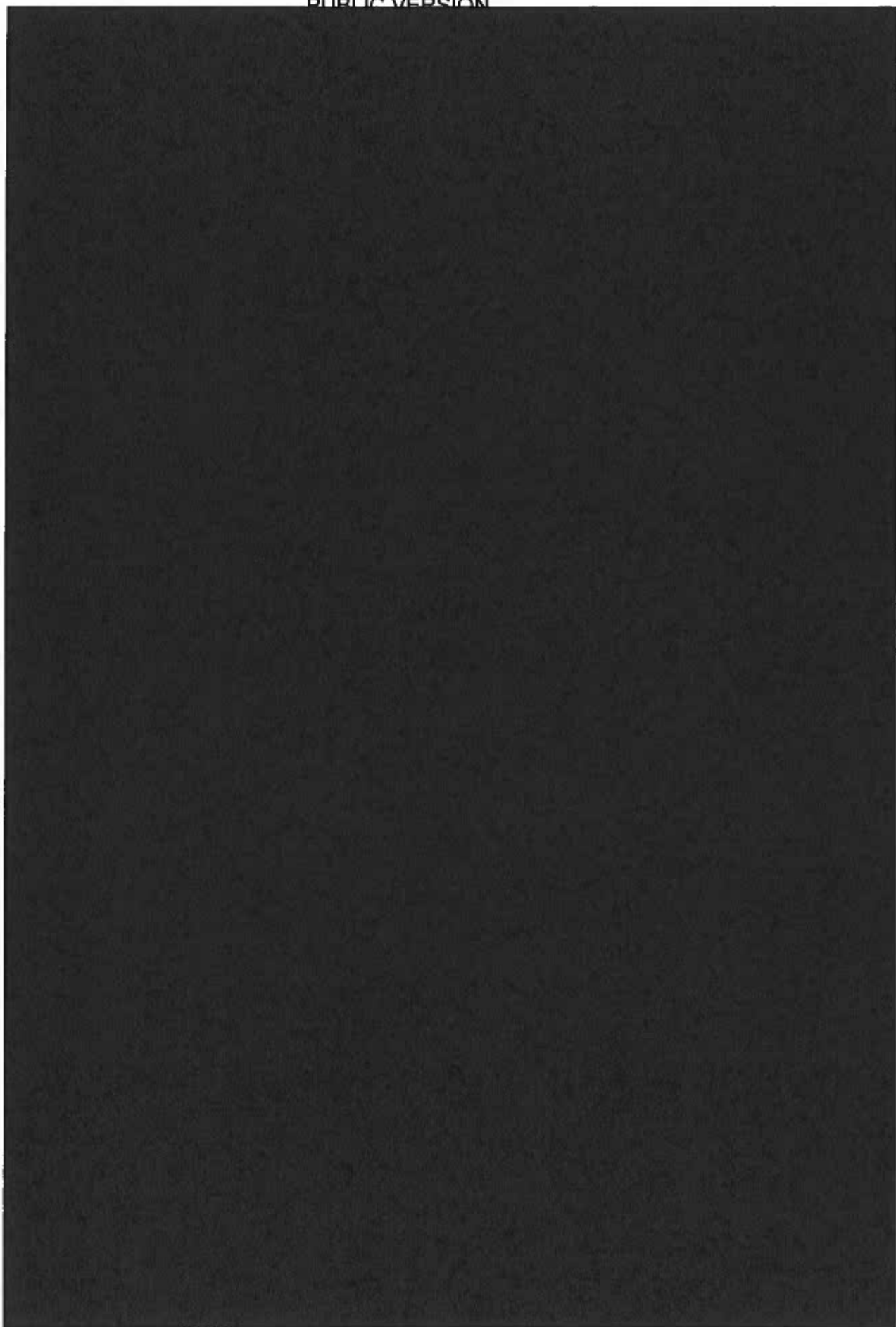
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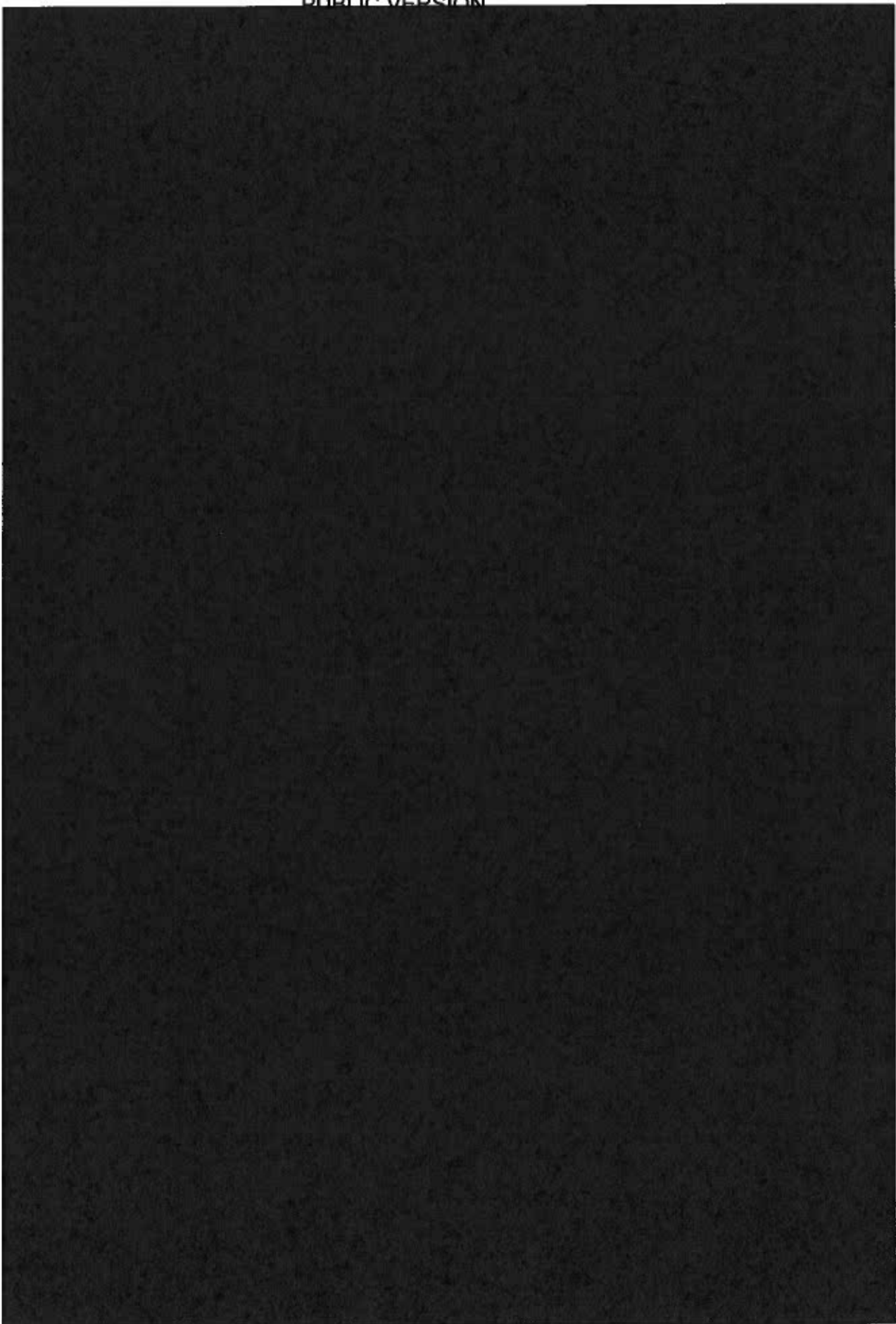
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## **Exhibit 12**

Item 1: ☒ An Initial (Original)  
SubmissionOR ☐ Resubmission No. \_\_\_\_\_

Form 1 Approved  
OMB No.1902-0021  
(Expires 11/30/2022)

Form 1-F Approved  
OMB No.1902-0029  
(Expires 11/30/2022)

Form 3-Q Approved  
OMB No.1902-0205  
(Expires 11/30/2022)



# FERC FINANCIAL REPORT

## FERC FORM No. 1: Annual Report of Major Electric Utilities, Licensees and Others and Supplemental Form 3-Q: Quarterly Financial Report

These reports are mandatory under the Federal Power Act, Sections 3, 4(a), 304 and 309, and 18 CFR 141.1 and 141.400. Failure to report may result in criminal fines, civil penalties and other sanctions as provided by law. The Federal Energy Regulatory Commission does not consider these reports to be of confidential nature

Exact Legal Name of Respondent (Company)

Duke Energy Progress, LLC

Year/Period of Report

End of 2019/Q4

SUMMARY OF UTILITY PLANT AND ACCUMULATED PROVISIONS  
FOR DEPRECIATION, AMORTIZATION AND DEPLETION

Report in Column (c) the amount for electric function, in column (d) the amount for gas function, in column (e), (f), and (g) report other (specify) and in column (h) common function.

Line No.	Classification (a)	Total Company for the Current Year/Quarter Ended (b)	Electric (c)
1	Utility Plant		
2	In Service		
3	Plant in Service (Classified)	26,658,157,550	26,658,157,550
4	Property Under Capital Leases	694,752,950	694,752,950
5	Plant Purchased or Sold		
6	Completed Construction not Classified	5,758,937,894	5,758,937,894
7	Experimental Plant Unclassified		
8	Total (3 thru 7)	33,111,848,394	33,111,848,394
9	Leased to Others		
10	Held for Future Use	56,900,984	56,900,984
11	Construction Work in Progress	1,100,726,367	1,100,726,367
12	Acquisition Adjustments	349,801,943	349,801,943
13	Total Utility Plant (8 thru 12)	34,619,277,688	34,619,277,688
14	Accum Prov for Depr, Amort, & Depl	12,950,921,387	12,950,921,387
15	Net Utility Plant (13 less 14)	21,668,356,301	21,668,356,301
16	Detail of Accum Prov for Depr, Amort & Depl		
17	In Service:		
18	Depreciation	12,516,278,858	12,516,278,858
19	Amort & Depl of Producing Nat Gas Land/Land Right		
20	Amort of Underground Storage Land/Land Rights		
21	Amort of Other Utility Plant	378,291,457	378,291,457
22	Total In Service (18 thru 21)	12,894,570,315	12,894,570,315
23	Leased to Others		
24	Depreciation		
25	Amortization and Depletion		
26	Total Leased to Others (24 & 25)		
27	Held for Future Use		
28	Depreciation		
29	Amortization		
30	Total Held for Future Use (28 & 29)		
31	Abandonment of Leases (Natural Gas)		
32	Amort of Plant Acquisition Adj	56,351,072	56,351,072
33	Total Accum Prov (equals 14) (22,26,30,31,32)	12,950,921,387	12,950,921,387

